No. 2891

United States
Circuit Court of Appeals
For the Ninth Circuit.

ED JOHNSON and A. C. LAIRD,
Plaintiffs in Error,
vs.
THE UNITED STATES OF AMERICA,
Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court of the District of Alaska, Second Division.

Filmer Bros. Co. Print, 330 Jackson St., S. F., Cal.

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys of Record.

F. M. SAXTON, District Attorney, Nome, Alaska,
Attorney for Plaintiff,

GEORGE B. GRIGSBY, HUGH O'NEILL, Nome, Alaska,
Attorneys for Defendants. [1*]

In the District Court for the District of Alaska, Second Division.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ED. JOHNSON, A. C. LAIRD, FRANK KOIBETITZ, JOHN NOVOSEL, NICK SKORLICH, ALFRED PIERSON, ADELBERT G. GUMAER,

Defendants.

Indictment.

For violation of Section 2032, Compiled Laws.

At a general term of the District Court of the District of Alaska, Second Division, in the year one thousand nine hundred and sixteen, begun and held at Nome in said District and Territory beginning the 29th day of January, 1916, the grand jury for said Division No. 2, district and territory aforesaid, empaneled and charged for said Territory and District of Alaska, Division No. 2, accuses Ed. Johnson, A. C. Laird, Frank Koibetitz, John Novosel, Nick Skorlich, Alfred Pierson, Adelbert G. Gumaer, of

*Page-number appearing at foot of page of original certified Transcript of Record.

the crime of gambling committed as follows:

The said Ed. Johnson, A. C. Laird, Frank Koibetitz, John Novisel, Nick Skorlich, Adelbert G. Gumaer, Alfred Pierson, on the 5th day of January, 1916, in the municipality of Nome, and District of Alaska, did wrongfully and unlawfully deal, play, carry on, open, cause to be opened, and conduct a certain game called "stud poker" which said game was then and there a game played with cards for money, checks and chips as representatives of value, contrary to the form of the statutes in such cases made and provided, and against the peace and dignity of the United States.

SECOND COUNT.

And the grand jury by this indictment further accuse the said Ed. Johnson, A. C. Laird, Frank Koibetitz, John Novosel, Nick Skorlich, Adelbert G. Gumaer, Alfred Pierson, of the crime of gambling committed as follows: [2]

The said Ed. Johnson, A. C. Laird, Frank Koibetitz, John Novosel, Nick Skorlich, Adelbert G. Gumaer, Alfred Pierson, on the 5th day of January, 1916, in the municipality of Nome, and District of Alaska, did wrongfully and unlawfully deal, play, carry on, open, cause to be opened, and conduct a certain game called "pangingi," which said game was then and there a game played with cards for money, checks and chips as representatives of value, contrary to the form of the statutes in such cases made and provided, and against the peace and dignity of the United States.

Dated at Nome, in the District and Territory and Division aforesaid, this 6th day of April, 1916.

F. M. SAXTON,
United States Attorney.

Witnesses examined before the grand jury:

Phil Holland,	Frank Martin,
A. B. Miller,	Charles Mason,
J. Terrell,	A. Hanson,
W. Dougherty,	Frank C. Dean,
	N. B. Nelsen.

[Endorsed]: #1036. Crim. The District Court, District of Alaska, Second Division. The United States vs. ———. A True Bill. Frank P. Williams, Foreman. Filed A. D. 1916. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Apr. 6, 1916. G. A. Adams, Clerk. By ————, Deputy. F. W. L. F. M. Saxton, U. S. Attorney. **[3]**

In the District Court for the District of Alaska, Second Division.

No. ——.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ED. JOHNSON, A. C. LAIRD, FRANK KOIBETITZ, JOHN NOVOSEL, NICK SKORLICH, ALFRED PIERSON, ADELBERT G. GUMAER,

Defendants.

Motion to Quash Indictment.

Come now the defendants in the above-entitled action by and through their attorneys, George B. Grigsby and Hugh O'Neill, and move the Court to quash the indictment herein on the following ground:

That said defendants and each of them have been once in jeopardy for each of the offenses charged in said indictment in this: That on the 8th day of January, 1916, said defendants were tried in the U. S. Commissioner's Court for Cape Nome Precinct, Second Division of the Territory of Alaska for the identical offenses charged in said indictment, by James Frawley, U. S. Commissioner and Ex-officio Justice of the Peace, on an information theretofore filed in said Commissioner's Court, which information was entitled "United States of America, Plaintiff, vs. Ed. Johnson, A. C. Laird, Frank Koibetitz, John Novosel, Nick Skorlich, Chas. Mason, Alfred Pierson, B. Garnard, A. Hanson, N. B. Nelsen, defendants."

This motion is based upon the records, proceedings and files of said U. S. Commissioner's Court in said action, and on the affidavit of George B. Grigsby hereunto annexed and made a part hereof.

Dated at Nome, Alaska, this 11th day of April, 1916.

GEORGE B. GRIGSBY,
HUGH O'NEILL.
Attorneys for Defendants. [4]

In the District Court for the District of Alaska, Second Division.

No. ——.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ED. JOHNSON, A. C. LAIRD, FRANK KOIBETITZ, JOHN NOVOSEL, NICK SKORLICH, ALFRED PIERSON, ADELBERT G. GUMAER,

Defendants.

Affidavit of George B. Grigsby in Support of Motion to Quash Indictment.

United States of America,
Territory of Alaska,
Second Division,—ss.

George B. Grigsby, being duly sworn, on oath deposes and says:

That he is one of the attorneys for the defendants herein. That on the 7th day of January, 1916, an information was filed in the U. S. Commissioner's Court for the Precinct of Cape Nome, Second Division, of the Territory of Alaska, charging the defendants herein with the identical offenses charged, or attempted to be charged, in the indictment herein. That affiant represented the defendants herein in all proceedings in said U. S. Commissioner's Court in relation to said offenses.

That on the 7th day of January, 1916, at the hour

of 2 o'clock P. M. of said day affiant appeared in said U. S. Commissioner's Court as attorney for all of said defendants in said action theretofore commenced by the filing of said information and requested the Court to enter a plea of not guilty for each of said defendants and demanded a jury trial. That thereafter said U. S. Commissioner James Frawley refused said demand for a jury trial and proceeded to hear the evidence in said action and thereafter jailed and refused to find the defendants, or any of them guilty or not guilty of the offenses charged, or either of them, but did order all of said defendants except Charles A. Mason, A. Hanson and N. B. Nelson to be held to answer to the District Court. [5]

That by reason of the information filed in said Commissioner's Court against said defendants and their appearance personally and by attorney and the laws of Alaska the said James Frawley, United States Commissioner, had jurisdiction of said action and jurisdiction of the person of the defendants and jurisdiction to try said action as Ex-officio Justice of the Peace.

WHEREFORE affiant alleges that the defendants herein have been in jeopardy by reason of having already been tried for the identical offenses charged, or attempted to be charged, in said indictment, and that the above-entitled court is without jurisdiction to hear this action.

GEORGE B. GRIGSBY.

Subscribed and sworn to before me this 11th day of April, 1916.

[Notarial Seal] D. B. CHACE,
Notary Public for the Territory of Alaska, Residing at Nome.

(My commission expires May 12, 1917.)

[Endorsed]: In the District Court for the District of Alaska, 2d Division. United States of America, Plaintiffs, vs. Ed. Johnson et al., Defendants. Motion to Quash and Affidavit. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Apr. 10, 1916. G. A. Adams, Clerk. By ————, Deputy. F. W. L. George B. Grigsby, Hugh O'Neill, Attorneys for Defendants. **[6]**

In the District Court for the District of Alaska, Second Division.

Term Minutes, General 1916 Term, beginning January 29, 1916.

Tuesday, April 11, 1916, at 2 P. M.

Court convened pursuant to adjournment—Honorable J. R. TUCKER, District Judge, presiding.

Upon the convening of Court the following proceedings were had.

1036C.

UNITED STATES

vs.

E. JOHNSON et al.

Minutes of Court—April 11, 1916—Order Overruling Motion to Quash Indictment, Plea, etc.

Defendants represented by counsel Geo. B. Grigsby and Hugh O'Neill. United States represented by F. M. Saxton, District Attorney.

Counsel for defendants moved to quash indictment and in support of motion offered the transcript, with papers annexed, filed in the office of the clerk under #75—Preliminary Examination on Jan. 28, 1916, which was ordered marked as "Defendant's Exhibit 1 on Motion to Quash."

Motion overruled.

An exception to the ruling being taken and allowed to the defendants.

Defendants' counsel then filed demurrer which was submitted without argument and overruled.

Geo. B. Grigsby, of counsel for defendants, then for and on behalf of the defendants entered a plea of not guilty, and also for and on behalf of each of said defendants entered the further plea of former acquittal for the crime charged in the indictment in the U. S. Commissioner's Court, Cape Nome Precinct, Second Division, Territory of Alaska, before James Frawley, Commissioner and Justice of the Peace, on the 8th day of January, 1916.

Written plea of former jeopardy then presented and filed.

By agreement of counsel trial of case set at 10 A. M. to-morrow, April 12, 1916. The case of United States vs. Gene Rose, being reset to follow this case.

Thereupon Court adjourned until 10 A. M. to-morrow, April 12, 1916. [7]

In the District Court for the District of Alaska, Second Division.

No. ——.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ED. JOHNSON, A. C. LAIRD, FRANK KOIBETITZ, JOHN NOVOSEL, NICK SKORLICH, ALFRED PIERSON, ADELBERT G. GUMAER,

Defendants.

Demurrer to Indictment.

Come now the defendants in the above-entitled action by and through their attorneys George B. Grigsby and Hugh O'Neill and demur to the indictment herein filed on the following grounds:

First. That said indictment does not state facts sufficient to constitute a crime.

Second. That more than one crime is charged in said indictment.

Third. That two offenses are improperly joined in said indictment.

Fourth. That said indictment does not substantially conform to the requirements of Chapter 7 of Title XV of the Complied Laws of Alaska.

Fifth. That there is a misjoinder of parties defendant in said indictment.

GEORGE B. GRIGSBY,
HUGH O'NEILL,
Attorneys for Defendants.

[Endorsed]: In the District Court, District of Alaska, Second Division. United States of America, Plaintiff, vs. Ed. Johnson et al., Defendants. Demurrer. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Apr. 10, 1916. G. A. Adams, Clerk. By ————, Deputy F. W. L. [8]

In the District Court for the District of Alaska, Second Division.

Term Minutes, General 1916 Term, Beginning January 29, 1916.

Tuesday, April 11, 1916, at 2 P. M.

Court convened pursuant to adjournment—Honorable J. R. TUCKER, District Judge, presiding.

Upon the convening of Court the following proceedings were had:

1036C.

UNITED STATES

vs.

E. JOHNSON et al.

Minutes of Court—April 11, 1916—Order Overruling Motion to Quash Indictment, Plea, etc.

Defendants represented by counsel Geo. B. Grigsby and Hugh O'Neill. United States represented by F. M. Saxton, District Attorney.

Counsel for defendants moved to quash indictment and in support of motion offered the transcript, with papers annexed, filed in the office of the clerk under #75—Preliminary Examination on

Jan. 28, 1916, which was ordered marked as "Defendant's Exhibit 1 on Motion to Quash."

Motion overruled.

An exception to the ruling being taken and allowed to the defendants.

Defendants' counsel then filed demurrer which was submitted without argument and overruled.

Geo. B. Grigsby, of counsel for defendants, then for and on behalf of the defendants entered a plea of not guilty, and also for and on behalf of each of said defendants entered the further plea of former acquittal for the crime charged in the indictment in the U. S. Commissioner's Court, Cape Nome Precinct, Second Division, Territory of Alaska, before James Frawley, Commissioner and Justice of the Peace, on the 8th day of January, 1916.

Written plea of former jeopardy then presented and filed.

By agreement of counsel trial of case set at 10 A. M. to-morrow, April 12, 1916. The case of United States vs. Gene Rose being reset to follow this case.

Thereupon Court adjourned until 10 A. M. to-morrow, April 12, 1916. **[9]**

In the District Court for the District of Alaska, Second Division.

Term Minutes, General 1916 Term, Beginning January 29, 1916.

Tuesday, April 11, 1916, at 2 P. M.

Court convened pursuant to adjournment—Honorable J. R. TUCKER, District Judge, presiding.

Upon the convening of Court the following proceedings were had:

1036C.

UNITED STATES

vs.

E. JOHNSON et al.

Minutes of Court—April 11, 1916—Order Overruling Motion to Quash Indictment, Pleas, etc.

Defendants represented by counsel Geo. B. Grigsby and Hugh O'Neill. United States represented by F. M. Saxton, District Attorney.

Counsel for defendants moved to quash indictment and in support of motion offered the transcript, with papers annexed, filed in the office of the clerk under #75—Preliminary Examination on Jan. 28, 1916, which was ordered marked as "Defendant's Exhibit 1 on Motion to Quash."

Motion overruled.

An exception to the ruling being taken and allowed to the defendants.

Defendants' counsel then filed demurrer which was submitted without argument and overruled.

Geo. B. Grigsby, of counsel for defendants, then for and on behalf of the defendants entered a plea of not guilty, and also for and on behalf of each of said defendants entered the further plea of former acquittal for the crime charged in the indictment in the U. S. Commissioner's Court, Cape Nome Precinct, Second Division, Territory of Alaska, before James Frawley, Commissioner and Justice of the Peace, on the 8th day of January, 1916.

Written plea of former jeopardy then presented and filed.

By agreement of counsel trial of case set at 10 A. M. to-morrow, April 12, 1916. The case of United States vs. Gene Rose being reset to follow this case.

Thereupon Court adjourned until 10 A. M. to-morrow, April 12, 1916. **[10]**

In the District Court for the District of Alaska, Second Division.

No. ——.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ED. JOHNSON, A. C. LAIRD, FRANK KOIBETITZ, JOHN NOVOSEL, NICK SKORLICH, ALFRED PIERSON and ADELBERT G. GUMAER,

Defendants.

Plea of Former Jeopardy.

Defendants, and each of them, by and through their attorneys George B. Grigsby and Hugh O'Neill,

each for himself pleads that he has already been tried for the crime charged in the indictment herein, in the United States Commissioner's Court for Cape Nome Precinct, Second Division, of the Territory of Alaska, by and before James Frawley, U. S. Commissioner and Ex-officio Justice of the Peace, on the 8th day of January, 1916.

GEORGE B. GRIGSBY,
HUGH O'NEILL,
Attorneys for Defendants.

[Endorsed]: In the District Court for the District of Alaska, 2d Division. United States of America, Plaintiff, vs. Ed. Johnson et al., Defendants. Plea of Former Jeopardy. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Apr. 10, 1916. G. A. Adams, Clerk. By ————, Deputy, F. W. L. **[11]**

In the District Court for the District of Alaska, Second Division.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

ED. JOHNSON, A. C. LAIRD, FRANK KOIBETITZ, JOHN NOVOSEL, NICK SKORLICH, ALFRED PIERSON, ADELBERT G. GUMAER,
Defendants.

Motion for Order Appointing Special Officer to Serve Venire for Additional Jurors, etc.

Come now the defendants in the above-entitled cause and move the Court that a special officer be appointed to serve the venire for additional jurors about to issue herein on the ground that the United States Marshal and his deputies are not indifferent persons and are interested in the event of the above-entitled cause.

This motion is based upon the affidavit of Geo. B. Grigsby hereto attached and made a part hereof.

GEO. B. GRIGSBY,
HUGH O'NEILL,
Attorneys for Defendants. **[12]**

In the District Court for the District of Alaska, Second Division.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

ED. JOHNSON et al.,
Defendants.

Territory of Alaska,
Second Division,—ss.

George B. Grigsby, being first duly sworn, deposes and says: That the above-entitled action came on for trial on the 12th day of April, 1916, in the above-entitled court and thereafter on the 14th day of April, 1916, resulted in a disagreement of the jury and was immediately set for retrial for the 17th day

of April, 1916: That on said previous trial of said case, one N. B. Nelson testified that on the 30th day of December, 1915, he was employed by E. R. Jordan, the United States Marshal for the Second Division, District of Alaska, to look up gambling in the town of Nome; That thereafter, pursuant to said employment, the said Nelson on five or six different evenings played "stud poker" for money in a place known as the Arctic Billiard Parlors—the last occasion of said playing being on the 5th day of January, 1916, that on said last-mentioned occasion, he, the said Nelson, played "stud poker" for money with certain of the defendants above named and during the progress of the game, left the place where the same was being carried on and reported the existence of the game to Deputy Marshal Phil Holland; that thereupon said Nelson returned to said Arctic Billiard Parlor and shortly thereafter said Phil Holland, together with said Chief Deputy Marshal A. B. Miller and Deputy Marshals Elmer Reed and Joel Terrell entered said place and arrested the defendants herein without warrant; that said E. R. Jordan testified at said former trial that he did employ the said N. B. Nelson as testified to by the said Nelson and paid him for his said services the sum of sixty-five dollars with money belonging to him personally; [13] that on the trial of said action one Perry Moore testified that shortly before the 25th of December, 1915, he heard the said Deputy Marshal Phil Holland say to defendant Ed. Johnson, "I am coming after you and I'm going to get you." That said E. R. Jordan and all of his deputy marshals above named were witnesses against the defendants on

said former trial, and with the exception of N. B. Nelson and the said deputy marshals above named there was no evidence offered by the Government tending to prove that the defendants or any of them played the games of cards mentioned in the indictments herein, nor any evidence whatever that said games were played for money, except the evidence of the said N. B. Nelson.

WHEREFORE affiant alleges that the said United States Marshal E. R. Jordan and his said deputies are not indifferent persons for the summoning of jurors herein as required by Sec. 803, R. S. That said prosecution originated in said Marshal's office without the complaint of any private citizen, and that by reason of the foregoing facts the said United States Marshal E. R. Jordan and his said deputies are unduly interested in the securing of a conviction herein.

GEORGE B. GRIGSBY.

Subscribed and sworn to before me this 17th day of April, 1916.

[Notarial Seal] D. B. CHACE,
Notary Public in and for the Territory of Alaska.
(My commission expires May 12, 1917.)

[Endorsed]: No. 1036C. In the District Court for the District of Alaska, Second Division. United States, Plaintiff, vs. Ed. Johnson et al., Defendant. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome, Apr. 26, 1916. G. A. Adams, Clerk. By ————, Deputy. Geo. B. Grigsby and Hugh O'Neill, Attorney at Law, Nome, Alaska, Attorney for Defendants. [14]

In the District Court for the District of Alaska, Second Division.

TERM MINUTES, General 1916 Term, Beginning January 29, 1916.

Wednesday, April 26, 1916, at 10 A. M.

Court convened pursuant to adjournment—Honorable J. R. TUCKER, District Judge, presiding.

Upon the convening of the court the following proceedings were had:

1036C.

UNITED STATES

vs.

ED. JOHNSON et al.

Minutes of Court—April 26, 1916—Trial.

Roll-call of jurors showed all remaining members of the regular panel in attendance.

Defendants all present in person and by their counsel Messrs. Grigsby and O'Neill. United States represented by F. M. Saxton, District Attorney.

F. M. Saxton presented and filed stipulation between counsel for respective parties.

Names of jurors were placed in the box and regularly drawn therefrom as follows: O. A. Bourett, Otto Halla, David Leljerath, J. P. Britzius, Ed. Parker, D. B. Camp, and Walter Quigley.

Geo. B. Grigsby, counsel for defendants, then filed motion and affidavit for appointment of special officer to serve special venire. Motion overruled, defendants taking and being allowed an exception.

Special venire for twenty-five names, returnable at 10 A. M. to-morrow, ordered.

Chas. Mason, witness for whom subpoena had issued behalf of the Government, was present in court.

Geo. B. Grigsby, counsel for defendants, tendered two hundred and fifty ($250) dollars as cash bail to secure the attendance of witness Mason at all times during further proceedings in this case and which said sum was also to operate as cash supersedeas bond in the case of United States vs. Chas. Mason et al., in event of defendants perfecting appeal.

Such cash sum accepted on foregoing conditions and then and there paid.

Whereupon Court adjourned until 10 A. M. to-morrow, April 27, 1916. [15]

In the District Court for the District of Alaska, Second Division.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ED. JOHNSON, A. C. LAIRD, FRANK KOBETITZ, JOHN NOVOSEL, NICK SKORLICH, ALFRED PIERSON, ADELBERT G. GUMAER,

Defendants.

Court's Instructions to the Jury.

GENTLEMEN OF THE JURY:

1.

The defendants are charged by the first count of the indictment in this case with dealing, playing,

carrying on, opening, causing to be opened and conducting a game called "stud poker," and by the second count of said indictment in this case with dealing, playing, carrying on, opening, causing to be opened and conducting a game called "Pangingi."

Section 2032 of the Compiled Laws of Alaska is the one under which this case is prosecuted. Each and every person who shall deal, play, carry on, or cause to be carried on, or conduct, either as owner, proprietor, or employee, whether for hire or not, any game played with cards, dice, or any other device, whether the same shall be played for money, checks, credit, or any other representative of value, shall be guilty of a misdemeanor.

To this indictment the defendants have entered a plea of not guilty and you are instructed that such plea puts the burden of proof upon the prosecution to establish every essential allegation of the indictment beyond reasonable doubt.

2.

There are seven defendants in this case and it becomes your duty to consider each one of them separately in relation to the crime charged under the evidence and instructions in this case. All or any number of them may be innocent or all or any number of them may [16] be guilty on one or both of the counts charged. That is for you to determine from the evidence under these instructions. And in determining the guilt or innocence of any one of these defendants, you should consider the evidence and these instructions in their relation to such defendant as if such defendant were the only defendant in the case. Hence when I have used the word

"defendant" in these instructions, you will understand that the same is used to represent each of the defendants when his guilt or innocence is under consideration by you.

3.

The essential elements of the crime of gambling are:

1st. That the game was played with cards, dice or other device;

2d. That such game was played for money, checks, chips, credit, or other representative of value;

3d. That the defendant was connected with such game as a dealer, player, owner, proprietor, or employee or lessee of the room in which such game was conducted;

4th. That said game was played in the Second Division of Alaska within three years prior to the date of filing the indictment in the case;

5th. That if defendant was not connected with such game as dealer, player, owner, proprietor or employee, but was the owner or lessee of the room in which the game was played, then that defendant knew that gambling was being conducted in said room.

4.

In a criminal cause the judge and jury of this court have important though separate functions to perform. It is your duty to hear all of the evidence and to decide thereupon all questions of fact. Sometimes it is attempted to introduce testimony which for legal reasons the Court refuses to permit. You will not consider any such matter or any knowledge or

information known to you concerning the case and not derived from evidence given upon the witness-stand in arriving at your verdict. It is the duty of the Judge of this court to instruct you upon the law applicable to the case and the statute makes it your duty to accept as law what is laid down by the Court as such in these instructions, and if you should knowingly refuse [17] to do so you would be liable as for contempt of court.

5.

Each of the defendants in this case is presumed to be innocent until he is proven guilty. If upon such proof there be reasonable doubt remaining the accused is entitled to the benefit of it by an acquittal. A reasonable doubt is such a doubt as exists in the mind of a reasonable man after a full, free, and careful examination and comparison of all the evidence. It must be such a doubt as would cause a careful, considerate, and prudent man to pause and consider before acting in the careful and most important affairs of life. A certainty that convinces and directs the understanding and satisfies a reasonable judgment would be proof beyond reasonable doubt. If you believe as reasonable men you should not disbelieve as jurors.

This does not mean that every element of the crime charged must be proven by direct and positive evidence. Facts may be proven by indirect or circumstantial evidence, or may be a presumption arising from the facts proven. If you are satisfied beyond a reasonable doubt that your conclusion is correct that is sufficient whether based upon direct proof, indirect or circumstantial proof, or from a presump-

tion arising from other facts proven.

5½.

I instruct you that the testimony of one witness, if believed by you, is sufficient to establish any material fact in the case unless such witness is an accomplice. If you believe from the evidence that the witness, N. B. Nelson, was employed by the United States Marshal for this Division to engage in the apprehension of persons violating the law by gambling, and that in pursuance of said employment the said Nelson engaged in a gambling game, if any, with the defendants, then I instruct you that said Nelson is not an accomplice with the defendants, and you should give his testimony the same weight and consideration as you would have done if he had been present and had testified to the same matters without participating in the game.

On the other hand, if you believe from the evidence that the said witness N. B. Nelson was not employed by the United States Marshal or that he did not engage in the gambling game, if any, with the [18] defendants, for the purpose of apprehending them, then I instruct you that he was an accomplice and his testimony connecting the defendants with the game, if any, must be corroborated by some other evidence which tends to connect the defendants with the game. However, his testimony as to the character and elements of the game need not be corroborated even though he be an accomplice. In other words the testimony of an accomplice is sufficient, if you believe it, to establish that a certain game played with cards for money, checks, chips or credits of value was being played at a certain time and place,

without any corroboration whatever. But his testimony as to who was engaged in or connected with the game, if any, must be corroborated by some other evidence tending to connect the defendants with the game.

Hence, the testimony of said witness, N. B. Nelson, whether you find that he was an accomplice or not, if you believe it, is sufficient to establish the kind of a game that was being played, if any; the means or instrumentalities used in playing such game, if any; and the nature and value of the "stakes" for which such game was being played, if any. However, his testimony, if any, connecting the defendants with the game, must be corroborated as heretofore stated, in case you find him to be an accomplice, but not otherwise.

5½A.

The Government has introduced certain evidence in this case tending to show that the defendants were playing for certain chips on which the value in trade of each chip is printed. I instruct you that the printing on each of such chips is sufficient evidence to establish the value thereof, since no evidence has been introduced to explain or contradict the printing thereon.

6.

You are the sole judges of the credibility of witnesses and the weight to be attached to their testimony. This power is not to be exercised arbitrarily by you, but with reasonable discretion and in subordination to the rules of evidence. You may take into consideration the interest the witness has, if any, in the result of the trial, his bias or prejudice

if either, his mental capacity and his [19] means for knowing that about which he testifies, the reasonableness or unreasonableness of his statements, his demeanor on the witness-stand, his candor or evasion, and then applying your knowledge of human actions and motives you will determine where the truth lies and find accordingly.

You are instructed that you are not bound to find in conformity with the testimony of any number of witnesses which do not produce conviction in your minds against a less number, or against a presumption or other evidence satisfying your minds.

If you believe that any witness in this case has testified falsely in one part of his testimony you are at liberty to reject all of his testimony, but you are not bound to do so. You should reject the false part and may give such weight to other parts as you think they are entitled to receive.

6.

If you should find under the foregoing instructions that any of the witnesses in this case are accomplices, then I instruct you that the testimony of an accomplice ought to be viewed with distrust.

6½.

You are instructed that the oral admissions of a party are to be viewed with caution.

6½A.

Our statute provides that in the trial of a criminal case, the person accused shall at his own request, but not otherwise, be deemed a competent witness, but if the defendant or accused waives his right to testify in the case, such waiver shall not create any presumption against him.

7.

The owner or lessee of a building or room can not lease or sublet such building or room for an unlawful purpose, or knowingly permit it to be used for an unlawful purpose without being held guilty of the commission of the unlawful act or acts transpiring in such building or room. If you should find from the evidence in this case that one of the defendants held the room in which gambling is alleged to have been conducted under a lease from the owner, and you [20] further find that gambling as alleged was being conducted there, then I instruct you that such owner or lessee is guilty if he knew that such gambling was being carried on there whether he had any connection with the game or not.

It follows therefore, that if you find gambling was being carried on in the room known as the Arctic Billiard-room or Parlor, and that said room was held by defendant under a lease from the owner either oral or written, then I instruct you that such defendant is guilty if he knew that such room was being used for the purpose of gambling, and a game of stud poker or pangingi played with cards for money or chips of value was had in said room on the night in question, and the owner of said room is likewise guilty under same conditions if he knew them to exist.

Again if you find that a game of stud poker or pangingi was played with cards for money or chips of value on the night in question, in said room, and the defendant had anything to do with said game such as dealer, player, owner, proprietor or employee; then I instruct you that the defendant is guilty, and

it does not matter whether he was the lessee or owner of said room and had previous knowledge of said game or not.

8.

I have permitted evidence to be introduced in this case tending to show gambling to have been carried on in the room known as the Arctic Billiard-room at other times prior to the time alleged for the purpose of establishing the knowledge of the owner and lessee of said room that gambling was being carried on there, and you should consider it for no other purpose. As to what extent such testimony tends to show such knowledge on the part of defendant is for you to determine.

9.

There has been some testimony tending to show that the defendant, Ed. Johnson, has made statements to the effect that he intended to gamble in spite of law and the efforts of officials to stop him. You should consider this testimony only in determining the guilt or innocence of said defendant, Ed. Johnson. You should not consider [21] it as affecting the guilt or innocence of the other defendants.

9½A.

There have been some testimony tending to show that the defendant, Adelbert G. Gumaer, made an admission of his guilt in the presence of the witness, J. H. Young. You should consider this testimony only in determining the guilt or innocence of said defendant, Gumaer, and not as affecting the other defendants.

9½B.

The defendants have entered a plea of former conviction in this case, but there being no evidence admitted upon that plea, I instruct you that you are not to give the same any consideration.

10.

I submit to you three forms of verdict. If you should find all of the defendants guilty of both counts of the indictment you should return the verdict finding all of the defendants guilty as charged. If you should find that no one of the defendants is guilty of either count in the indictment, then you should return the verdict finding all of the defendants "not guilty." If you should find the defendants "guilty" of one count only of the indictment, and "not guilty" of the other count, or you should find some of the defendants guilty of both counts and the others not guilty of both, then you should return the third form of verdict filling in the names of the defendants whom you find guilty, if any, in your verdict on each count of the indictment in the blank space left for that purpose; and likewise filling in the names of the defendants not guilty in the blank space left for that purpose.

When you have retired to your jury room and have agreed upon your verdict, you should have your foreman, to be selected by yourselves, sign the one upon which you unanimously agree and return it into Court as your verdict in this case.

You may take into the jury-room for your guidance these instructions, the exhibits, and the indictment.

Let the bailiffs be sworn.

You may now retire, gentlemen, to deliberate upon your verdict.

J. R. TUCKER,
District Judge. [22]

[Endorsed]: 1036 U. S. vs. Ed. Johnson et al. Instructions to Jury. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome, Apr. 29, 1916. G. A. Adams, Clerk. By A., Deputy. [23]

Court's Remarks on Gambling Generally.

With respect to the offense of gambling generally, the Court will say that one of the counsel for defendants, going outside the evidence in this case, contrary to professional tradition and custom, inadvertently stated, arguendo, in excuse of the defendants, that United States senators and others in hight positions in this country socially, and otherwise, gambled, and that this community has heretofore acquiesced in gambling; concede the truth of this statement, if you will, and yet it must be plain to every person of ordinary intelligence that it is no excuse in law or morals for the offense of gambling. As to whether gambling per se is morally wrong or not, the courts have no concern; that is a matter for each individual to decide for himself in the forum of his own conscience, but it is morally wrong to knowingly disobey the law, and Congress—the law-making power and representative legislative body of this country has forbidden gambling in the Territory of Alaska as the states forbid it outside, and the law should be enforced by the

courts and the people should obey it.

There is no question about the wisdom of the law against gambling. No fair-minded intelligent man may fail to recognize that it is a social evil, harmful to the individual, to society and to the commercial interest of this community, as it is to all communities, more or less. We have in Nome a fine lot of children and young people; they surely should be taught either by example or precept that gambling is wrong and harmful; I cannot believe there are parents in this town who would teach them otherwise. For their good especially, therefore, as well as for other reasons, gambling should be suppressed,—irrespective of the place in which it goes on or the persons who engage in it; and it may and should be stamped out root and branch in this community by the co-operation of the municipal and Federal authorities, backed up as they should be, by a strong public sentiment against it. When the authorities unite for the enforcement of the law and the intelligent public sentiment of the community upholds them, as it should do, juries will do their duty without fear or favor. [24]

J. R. TUCKER,

[Endorsed]: #1036. U. S. vs. Ed. Johnson, et al. Court's Remarks on Gambling Generally. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. May 5, 1916. G. A. Adams, Clerk. By ————, Deputy. [25]

Instructions to Jury to Return for Further Consideration.

Upon the evidence and instructions in this case you should be able to reach a verdict.

The evidence in this case is plain, and the law is plain as I have pointed out to you in my written instructions.

Now, I shall give you a longer time for a further and more serious consideration of this case. When you retire to the jury-room again read over the instructions of the Court carefully and if there is anything about them you do not understand so advise the Court and I will endeavor to make the same plain to you. It is your duty to arrive at a verdict in the case according to the evidence and the instructions given you irrespective of all other considerations and interest. You may now retire for further consideration of the case.

May 1, 1916.

J. R. TUCKER,
Judge.

[Endorsed]: 1036. U. S. vs. Ed. Johnson, et al. Instructions to Jury to Return for Further Consideration. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. May 1, 1916. G. A. Adams, Clerk. By A., Deputy. [26]

In the District Court for the District of Alaska, Second Division.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ED. JOHNSON, A. C. LAIRD, FRANK KOIBETITZ, JOHN NOVOSEL, NICK SKORLICH, ALFRED PIERSON, ADELBERT G. GUMAER,

Defendants.

Verdict.

We, the trial jury, duly empaneled to try the above-entitled cause, find the defendants Ed. Johnson, A. C. Laird, guilty as charged in the first count of the indictment, and the defendants Frank Koibetitz, John Novosel, Nick Skorlich, Alfred Pierson, Adelbert G. Gumaer not guilty on said first count.

And we further find the defendants *the defendants* Ed. Johnson, A. C. Laird, Frank Koibetitz, John Novosel, Nick Skorlich, Alfred Pierson, Adelbert G. Gumaer not guilty on said second count.

W. LOERPABEL,

Foreman.

[Endorsed]: 1036–C. The District Court, District of Alaska, Second Division. The United States vs. Ed. Johnson et al. Verdict. Filed in the office of the Clerk of the District Court of Alaska, Second Divi-

sion, at Nome. May 1, 1916. G. A. Adams, Clerk. By ————, Deputy. [27]

In the District Court, District of Alaska, Second Division.

No. 1036.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ED. JOHNSON, A. C. LAIRD, FRANK KOIBETITZ, JOHN NOVOSEL, NICK SKORLICH, ALFRED PIERSON, ADELBERT G. GUMAER,

Defendants.

Judgment.

Now, at this time this cause coming on in open court for the passing of sentence and judgment in this case, the defendants, Ed. Johnson and A. C. Laird, appearing in person and by Geo. B. Grigsby and Hugh O'Neill, their counsel, and the United States appearing by F. M. Saxton, United States Attorney for the Second Division of the District of Alaska, and it appearing to the Court that heretofore on the 6th day of April, 1916, the grand jury returned and filed in the above-entitled court an indictment charging above-named defendants with the crime of gambling in two counts, and it further appearing that thereafter on the 8th day of April, 1916, said defendants appearing in person and by their said counsel in open court and were duly arraigned, and there-

after on the 11th day of April, 1916, the Court having overruled defendants' motion to quash and demurrer to said indictment the said defendants appeared in person and pleaded "not guilty" to said indictment, and thereafter on the 26th day of April, 1916, said cause coming on regularly for trial, and the said defendants appearing in person and by their said counsel, and a jury having been duly and regularly empaneled, and witnesses sworn and examined, and said cause having been argued by counsel, and said jury having been instructed by the Court, and said cause having been on the 29th day of April, 1916, submitted to said jury, and said jury thereafter on the first day of May, 1916, having returned against said defendants, Ed. Johnson and A. C. Laird, a verdict [28] of guilty of the crime charged in the first count of the said indictment, and the said Court at said time having fixed the 5th day of May, 1916, at 10 A. M. as the time for imposing sentence upon the said defendants, and the said time having now arrived, and the said defendants appearing in person and by their said counsel and interposing no reason why sentence should not now be pronounced;

IT IS NOW THEREFORE CONSIDERED, ORDERED, and ADJUDGED that the defendant, Ed. Johnson, be and he hereby is fined in the sum of five hundred dollars ($500), and that the United States as plaintiff herein have judgment against the said defendant, Ed. Johnson, for the sum of said fine of $500 and the costs of this action taxed at $364.95, and that in default of the payment of said fine and costs the said defendant be imprisoned in the Federal

Jail at Nome, Alaska, one day for each two dollars thereof, not exceeding one year.

AND IT IS FURTHER CONSIDERED, ORDERED, AND ADJUDGED that the defendant, A. C. Laird, be and he hereby is fined in the sum of five hundred dollars ($500), and that the United States as plaintiff herein have judgment against the said defendant, A. C. Laird, for the sum of said fine of $500 and the costs of this action taxed at $364.95, and that in default of the payment of said fine and costs the said defendant be imprisoned in the Federal Jail at Nome, Alaska, one day for each two dollars thereof, not exceeding one year.

IT IS FURTHER CONSIDERED, ORDERED and ADJUDGED that said judgments, including said fine and costs be docketed against each of the said defendants as in case of judgments in civil causes, and that plaintiff have execution therefor; that said judgments for costs shall be joint and several against the said defendants.

IT IS FURTHER ORDERED that said defendants be, and they hereby are, remanded to the custody of the United States Marshal [29] for the Second Division of Alaska for the execution of these judgments.

And it further appearing to the Court that the United States Marshal for this Division did take from the possession of said defendants at the time at which the crime was committed upon which the said defendants have been convicted, and from the room in which said crime was committed, then and there being used by the defendants in gambling, the

following described gambling implements, to wit:

1 deck of cards, being Plaintiffs' Exhibit "A" herein;

1 bunch of chips, being Plaintiffs' Exhibit "B" herein;

8 decks of cards, being Plaintiffs' Exhibit "C" herein;

1 bunch of chips, being Plaintiffs' Exhibit "D" herein;

1 box cards and chips, Plaintiffs' Exhibit "E" herein;

1 stud poker-table, Plaintiffs' Exhibit "F" herein;

1 Panginge table, Plaintiffs' Exhibit "G" herein;

IT IS THEREFORE FURTHER CONSIDERED, ORDERED, and ADJUDGED THAT THE United States Marshal for the Second Division of the District of Alaska be and he hereby is authorized and directed to destroy the said gambling implements and all thereof, and a certified copy of this order shall be his authority and warrant for so doing.

Dated at Nome this 5th day of May, 1916.

J. R. TUCKER,
District Judge. [30]

#1036—Crim. The District Court, District of Alaska, Second Division. The United States vs. Ed. Johnson et al. Judgment. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. May 5, 1916. G. A. Adams, Clerk. By W. C. McG., Deputy. J. D. #3, page #11. Orders and Judgments, Vol. 11, page 232, C. [31]

In the District Court for the District of Alaska, Second Division.

No. 1036–C.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ED. JOHNSON, A. C. LAIRD, FRANK KOIBETITZ, JOHN NOVOSEL, NICK SKORLICH, ALFRED PIERSON and ADELBERT G. GUMAER,

Defendants.

Bill of Exceptions.

BE IT REMEMBERED that on the 11th day of April, 1916, at a regular term of this court held in and for the Second Division, Territory of Alaska, at the courthouse of Nome, Alaska, the motion to quash the indictment in the above-entitled cause and the demurrer of said defendants to said indictment, each coming on regularly to be heard, the United States appearing by F. M. Saxton, and the defendants, and each of them, appearing in person and by George B. Grigsby and Hugh O'Neill, their attorneys, and the Court having overruled and denied said motion and demurrer, to which rulings of the Court the defendants then and there excepted and said exceptions having been then and there allowed;

AND IT BEING FURTHER REMEMBERED that on the 12th day of April, 1916, at said regular term of court the said above-entitled cause of the United States of America versus the above-named

defendants coming on regularly for trial before the Honorable J. R. TUCKER, Judge of said court, and a jury, the United States appearing by F. M. Saxton and the defendants appearing in person and by George B. Grigsby and Hugh O'Neill, their attorneys, the defendants, and each of them, entered a plea of not guilty and also a plea of former jeopardy;

AND BE IT FURTHER REMEMBERED that thereupon a jury was duly sworn and empaneled to try said above-entitled cause, and evidence having been submitted on the part of the Government and [32] upon the part of the defendants, and the case having been argued to the jury, and the Court having instructed the jury in writing, thereupon the jury retired and thereafter, on the 14th day of April, 1916, the jury having reported that it was unable to agree upon a verdict, was then and there discharged and said cause was then and there, on said 14th day of April, 1916, reset for trial for Monday, April 17th, at 10 o'clock A. M. [33]

BE IT FURTHER REMEMBERED that on the 17th day of April, 1916, at a regular term of the above-entitled court begun and held at Nome, in the Territory of Alaska, Second Division, the said above-entitled cause of the United States of America versus Ed. Johnson et al., coming on regularly for trial before the Honorable J. R. TUCKER, Judge of said court, and a jury, the United States appearing by F. M. Saxton, United States District Attorney, and the defendants appearing in person and by George B. Grigsby and Hugh O'Neill, their attorneys, thereupon the following proceedings were had, to wit:

F. M. Saxton, U. S. District Attorney, moved the Court to continue the case until the next day, the 18th of April, 1916, at the hour of 10 o'clock A. M., said motion being based upon the ground of the absence of three witnesses, Charles Mason, A. Hanson and Elmer Adams, whom the District Attorney said were competent and material witnesses without whom he could not proceed to trial. George B. Grigsby objected to any continuance of the case. The Court overruled the objection and continued the case until Tuesday, April 18th, 1916, at 10 o'clock A. M., to which ruling defendants excepted and said exception was allowed.

Thereupon pursuant to adjournment proceedings were resumed at 10 o'clock Tuesday morning, April 18th, 1916.

F. M. Saxton moved the Court that the case be continued until the next day at 10 o'clock A. M. on the ground that the United States was unable to find the witnesses previously referred to. Whereupon the following proceedings were had:

Mr. O'NEILL.—I think the District Attorney should be compelled to set this case far enough ahead so he can get his witnesses here.

The COURT.—I don't care to hear any argument in this case. As long as there is any possibility of finding these witnesses I am going to continue this case over from day to day and that possibility will be determined by the information I get from the District Attorney. [34]

To which ruling the defendants excepted and an exception was allowed.

Whereupon court adjourned until Wednesday morning April 19th, 1916, at 10 o'clock.

Thereupon pursuant to adjournment proceedings were resumed at 10 o'clock Wednesday morning, April 19th, 1916, as follows:

F. M. Saxton moved the Court for a further continuance of the case and until the next day at 10 o'clock A. M. on the ground that the marshal reported that he was still unable to find the missing witnesses. Defendants objected to a continuance of the case, which objection was overruled by the Court, to which ruling the defendants excepted and an exception allowed.

Whereupon Court adjourned until Thursday morning April 20th, 1916, at 10 o'clock.

THEREUPON pursuant to adjournment proceedings were resumed at 10 o'clock A. M. Thursday, April 20th, 1916, as follows:

Mr. SAXTON.—If the Court please I ask at this time that the case be continued until to-morrow morning at 10 o'clock for the reasons that have been assigned.

Mr. GRIGSBY.—We object to any continuance.

The COURT.—We will adjourn until to-morrow morning at 10 o'clock.

To which ruling of the Court defendants excepted and an exception allowed.

Whereupon court adjourned until Friday morning, April 21st, 1916, at 10 o'clock.

THEREUPON pursuant to adjournment proceedings were resumed at 10 o'clock A. M. Friday April 21st, 1916, as follows:

F. M. SAXTON.—I move the Court that the case go over until Monday morning at 10 o'clock.

Defendants objected to any continuance of the case which objection was overruled, to which ruling the defendants excepted and [35] an exception allowed. Whereupon court adjourned until Monday morning April 19th, 1916, at 10 o'clock.

THEREUPON, pursuant to adjournment, proceedings were resumed Monday morning, April 24th, 1916, at 10 o'clock as follows:

Mr. SAXTON.—If the Court please I will have to report the same condition this morning and I will ask the case to go over until Wednesday morning at 10 o'clock.

Mr. GRIGSBY.—Now if the Court please, there has been no showing made by the District Attorney to the effect that defendants are in any way at fault in this matter, or their counsel, and these defendants have been here every day for seven days. They are indicted, they are presumed to be innocent, they are not culprits, they should not be held up to the community as culprits, they have a right to a speedy trial unless there is some ground for refusing them. In any event they should not undergo the hardship of being hauled up here day after day. When this case is continued for a day it is continued for trial and they have to be here. Now the District Attorney should show the Court when he will be ready and not continue this case indefinitely. He has made no showing whatever in the premises. It looks very much as if there was an attempt to punish these defendants who have not been convicted of anything because the State

has not got these witnesses. I very much doubt if your Honor has any jurisdiction to compel them to attend court day after day in the absence of any showing. The District Attorney hasn't shown he will be ready, that he expects to be ready, or taken steps that he can be ready and he should not ask to have this case set for a day when he don't know whether he will be ready for trial or not. Let him announce the day he will be ready. We have some rights, legal rights. Supposing on the part of the defendants I came [36] up here and say, "I cannot get my witnesses, they are hiding somewhere," would your Honor grant a continuance indefinitely from day to day to these defendants? We have as much right as the prosecution in that regard and we insist at this time that this trial proceed this morning.

The COURT.—The case will go over until Wednesday morning at 10 o'clock.

Mr. GRIGSBY.—I wish to make a motion in this case. The defendants, and each of them, move that this prosecution be dismissed for the reason that defendants have not been accorded a speedy trial in accordance with their constitutional rights and we object to any continuance.

The COURT.—Motion overruled.

To which ruling of the Court defendants excepted and an exception allowed.

Whereupon the Court adjourned until Wednesday morning at 10 o'clock April 26th, 1916.

THEREUPON pursuant to adjournment proceedings were resumed at 10 o'clock Wednesday, morning, April 26th, 1916.

Whereupon the following jurors were drawn from the box: A. O. Bourette, Otto Halla, David Leljerath, J. P. Britzius, Ed Parker, D. B. Camp and Walter Quigley. The panel being exhausted the court ordered that a special venire issue for twenty-five jurymen returnable April 27th, 1916, at 10 o'clock A. M.

Whereupon the following proceedings were had:

Mr. GRIGSBY.—If the Court please, I think that number will be sufficient but before issuing the venire I have a motion to make which is as follows: [37]

In the District Court for the District of Alaska, Second Division.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ED. JOHNSON, A. C. LAIRD, FRANK KOIBETITZ, JOHN NOVOSEL, NICK SKORLICH, ALFRED PIERSON, ADELBERT G. GUMAER.

Motion for Order Appointing Special Officer to Serve Venire for Additional Jurors, etc.

Come now the defendants in the above-entitled cause and move the Court that a special officer be appointed to serve the venire for additional jurors about to issue herein on the ground that the United States Marshal and his deputies are not indifferent persons and are interested in the event of the above-entitled cause.

This motion is based upon the affidavit of Geo. B. Grigsby hereto attached and made a part hereof.

GEO. B. GRIGSBY,
HUGH O'NEILL,
Attorneys for Defendants. [38]

In the District Court for the District of Alaska, Second Division.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

ED. JOHNSON et al.,
Defendants.

Affidavit of George B. Grigsby.

Territory of Alaska,
Second Division,—ss.

George B. Grigsby, being first duly sworn, deposes and says:

That the above-entitled action came on for trial on the 12th day of April, 1916, in the above-entitled court and thereafter on the 14th day of April, 1916, resulting in a disagreement of the jury and was immediately set for retrial for the 17th day of April, 1916.

That on said previous trial of said case one N. B. Nelson testified that on the 30th day of December, 1915, he was employed by E. R. Jordan, the United States Marshal for the Second Division, District of Alaska, to look up gambling in the town of Nome; that thereafter, pursuant to said employment the said Nelson on five or six different evenings played "stud poker" for money in a place known as the Arctic

Billiard Parlors, the last occasion of said playing being on the 5th day of January, 1916; that on said last-mentioned occasion he, the said Nelson, played "stud poker" for money with certain of the defendants above named and during the progress of the game left the place where the same was being carried on and reported the existence of the game to Deputy Marshal Phil Holland; that thereupon said Nelson returned to said Arctic Billiard Parlor and shortly thereafter said Phil Holland, together with said Chief Deputy Marshal A. B. Miller and Deputy Marshals Elmer Reed and Joel Terrell entered said place and arrested the defendants herein without warrant; that said E. R. Jordan testified [39] at said former trial that he did employ the said N. B. Nelson as testified to by the said Nelson and paid him for his said services the sum of sixty-five dollars with money belonging to him personally; that on the trial of said action one Perry Moore testified that shortly before the 25th day of December, 1915, he heard the said Deputy Marshal Phil Holland say to defendant Ed. Johnson, "I am coming after you and I'm going to get you." That said E. R. Jordan and all of his deputy marshals above named were witnesses against the defendants on said former trial, and with the exception of N. B. Nelson and the said deputy marshals above named, there was no evidence offered by the Government tending to prove that the defendants or any of them, played the games of cards mentioned in the indictments herein, nor any evidence whatever that said games were played for money, except the evidence of the said N. B. Nelson.

WHEREFORE affiant alleges that the said United States Marshal E. R. Jordan and his said deputies are not indifferent persons for the summoning of jurors herein as required by Sec. 803 R. S. That said prosecution originated in said marshal's office without the complaint of any private citizen, and that by reason of the foregoing facts the said United States Marshal E. R. Jordan and his said deputies are unduly interested in the securing of a conviction herein.

GEORGE B. GRIGSBY.

Subscribed and sworn to before me this 17th day of April, 1916.

[Seal] D. B. CHACE,

Notary Public in and for the Territory of Alaska.

[40]

Mr. GRIGSBY.—The section this motion is made under, if the Court please, is Section 803 of the Revised Statutes. (Reads.) Now I will state to the Court that I have looked this matter up quite thoroughly and the authorities go so far as to hold that when the United States Marshal is the prosecuting witness in a criminal case that he is disqualified from serving the venire. When he has an opinion of the guilt of the accused even, he is disqualified from summoning the venire. Now in this case the disqualification is more apparent than in any case I have been able to find. The only witnesses, with the exception of Nelson, are the marshal and deputy marshals. Nelson was hired by the United States Marshal, not with money belonging to the marshal furnished for that purpose, but with his own money, showing a

direct personal interest on the part of the marshal, Emmet R. Jordan, in the hiring of his so-called detective. The raid was made by the other deputy marshals without warrant, not on the complaint, as is usual, of two citizens who have been injured, showing that the prosecution wholly and entirely originated in the marshal's office. Now necessarily it must be apparent that if the marshal's office takes enough interest in the enforcement of any particular law, then naturally he would do all he could to secure a conviction. It would be different if a private citizen made a complaint, charging them with a misdemeanor or felony. (Argument.) Necessarily, acording to all the laws of human nature he is interested in the success of it, throughout all the stages of the prosecution, and I assure the Court that it is my conviction that under the law he is disqualified from serving the venire. The statutes provide what should be done in such cases, to appoint some disinterested citizen and qualify him by oath to fill this panel.

Mr. SAXTON.—If the Court please, I have serious doubts as to the application of that law to this case or any other case in Alaska, as our statute provides for the issuing of a special venire for the jury without saying anything about appointing some disinterested citizen. It seems it shall be served by the marshal, but irrespective of that fact, taking these facts as shown by the affidavit, I [41] believe that it simply recites the testimony that was shown in this case. Now it seems to me a remarkable position to take that the marshal in this case is an interested person simply because he is doing his duty as a marshal.

Now, as your Honor well knows, the marshal's office should be active. It isn't his duty to sit down and wait until he is driven by a warrant or some proceeding of court before he acts but it is just as much his duty if he knows where a crime has been committed to investigate, and it is his duty to arrest, without a warrant. The law gives him that right and that privilege and the fact that these deputies went without a warrant is no evidence of any such interest in a case as would disqualify him from acting as an officer in the case, and the fact that he, out of his own private funds, employed a detective to investigate gambling, that doesn't show any animus against these defendants. It simply shows his interest as an officer in carrying out the law, seeing that it is enforced in his jurisdiction. As the facts show it was against gambling generally and there isn't one particle of evidence that the marshal is prejudiced against any one of these defendants. (Argument.) I am rather surprised that counsel should take this position in the matter. It does not seem to me that this community and this court can afford to take the position that when a man wants to do his duty and active in doing it, that that disqualifies him from performing the duties of his office. It certainly should not and does not as a proposition of law. (Argument.) If it was a case in which the marshal was financially interested in some way, as a civil case in which he was a party, then there would be some grounds for this position, but just because he has a little more zeal to enforce the law than perhaps some other marshals have had, or some other officials have had, certainly should not dis-

qualify him in the eyes of this court, or in the eyes of this community, to perform the usual and ordinary duties of his office. So I maintain that this motion should be overruled and that the marshal should serve this venire.

Mr. GRIGSBY.—If the Court please, I don't care to argue this much farther. I don't contend that the showing made showed any [42] personal animus at all, such is not necessary. The point is whether, under the circumstances as related in the affidavit, it isn't common sense to believe that the marshal is interested in securing a conviction in this case more than in an ordinary criminal case. (Argument.) The statutes with regard to the issuance of venires for jurors in Alaska are no different than in other states. In any state where the marshal is disqualified for any cause, a disinterested party is appointed. It is nothing unusual, it has been done before in this court and there is no showing before the Court except the facts in the affidavit which must be conceded as true, every one of them. It is not contradicted. The marshal went down in his pocket and paid N. B. Nelson personally. Does the marshal want to secure a conviction or is he absolutely indifferent as in an ordinary case he should be to be qualified? (Argument.) Now such facts do absolutely disqualify him. Under that statement I am willing to take a ruling of the court.

The COURT.—I overrule the motion.

To which ruling the defendants excepted and an exception was allowed.

Whereupon court adjourned until 10 o'clock Thursday morning, April 27th, 1916.

THEREUPON pursuant to adjournment proceedings were resumed at 10 o'clock Thursday morning, April 27, 1916.

The United States Marshal made return of the special venire which was returnable at this hour with the following named persons as having been served and all answered present at roll-call: Alfred Anderson, W. C. Bain, H. P. Breen, John Caldwell, E. W. Carleton, A. A. Chagnon, W. R. Hayes, Carl Hereim, Thos. Hull, G. R. Jackson, Robert James, Edw. Johnson, John Little, Wm. Loerpabel, J. G. McDougal, W. H. Pearson, Henry Peterson, C. F. Rice, Clarence Riggs, Davis Runyan, Harold Stokes, J. Sundback, Nels Swanberg, Geo. T. Watson and J. H. Young.

The names of the special venire were deposited in and regularly drawn from the box in the following order: H. P. Breen, John Caldwell, G. R. Jackson, Wm. Loerpabel and John Little. [43]

The twelve prospective jurors having been duly sworn the following jurors were examined as to their qualifications and passed for cause: O. A. Bourette, Otto Halla, David Liljerath, J. P. Britzius, Ed. Parker, D. B. Camp and E. W. Quigley.

H. P. Breem, John Caldwell and G. R. Jackson on examination were excused for cause and A. A. Chagnon, Geo. T. Watson and Edw. Johnson were drawn to fill their places on the jury.

Wm. Loerpable, John Little, A. A. Chagnon and George T. Watson were then examined as to their qualifications and passed for cause.

On examination Edw. Johnson was excused for cause.

Thos. Hull was then called on the jury and after examination was passed for cause.

Thereupon Ed Parker was excused on peremptory challenge of plaintiff.

Thereupon W. P. Pearson was drawn and called on the jury and being duly sworn testified as follows touching his qualifications to act as a trial juror in said cause:

Direct Examination.

Q. (By Mr. SAXTON.) You are a resident of Nome? A. Yes, sir.

Q. And a citizen of the United States?

A. Yes, sir.

Q. Do you know any of these defendants?

A. I just know a couple of them by sight.

Q. Which one?

A. Ed. Johnson and the other fellow there.

Q. The gentleman sitting next to him?

A. No, sir, this other fellow.

Q. Do you know anything about this case?

A. Only what I have heard.

Q. Have you heard what purports to be the facts?

A. No, sir.

Q. Did you talk with any of the witnesses?

A. No, sir. [44]

Q. Just general talk then? A. Yes, sir.

Q. Did you form any opinion as to the guilt or innocence of the defendants from what you heard?

A. Yes, sir.

Q. You are pretty busy are you not?

A. Well not so awful busy just now.

Q. You have acted as a juror in a trial criminal case before? A. No, sir.

Q. You understand it would be your duty as a juror, and you would take an oath if accepted as a juror that you would try the case upon the testimony as produced here? A. Yes, sir.

Q. Now could you lay aside anything you have heard or any opinion you may have and try the case upon the evidence and totally disregard any opinion you may have? A. Yes, sir.

Q. You could do that? A. Yes, sir.

Q. And you would do that if accepted as a juror?

A. Yes, sir.

Q. You wouldn't let what you have heard affect your verdict in any way? A. No, I would not.

Q. You understand that the defendants are presumed to be innocent. When you start out in the trial of a case the defendants are presumed to be innocent, that is the law. You understand that is the law?

A. Yes, sir.

Q. And you would give the defendants the benefit of that presumption? A. Yes sir.

Q. And you have no prejudice against prosecutions for gambling, have you? [45] A. No, sir.

Q. You would return a verdict of guilty if the evidence showed the defendants committed the offense? A. Yes, sir.

Q. There would be no tendency on your part to excuse a man for this offense than for any other?

A. No, sir.

Q. It would just simply be a question of what the

law is and the evidence given you by the witnesses as to whether the defendants committed this offense or not? A. Yes, sir.

Q. You are not aware of any reason why you would not be a fair and impartial juror?

A. No, sir.

Mr. SAXTON.—Pass the juror for cause.

Cross-examination.

Q. (By Mr. GRIGSBY.) You have an opinion at this time as to the guilt or innocence of the defendants? A. Yes, sir.

Q. Is that a fixed opinion?

A. Why, yes, to a certain extent.

Q. And one that would require evidence to remove? A. Yes, sir.

Q. And that opinion is based upon what you have been told was the evidence in the former trial?

A. From what I have heard.

Q. As to the evidence in the former trial?

A. No, I haven't heard any of the evidence.

Q. You have been told what the evidence was?

A. Well, I don't think I have. I haven't talked with any one.

Q. You have been told the facts in the case?

A. No, sir.

Q. Well, from what did you form your opinion?

A. From the general opinion of the town. [46]

Q. From conversations with other people?

A. From conversations.

Q. Impressions of other people? A. Yes, sir.

Q. And so if you went into the trial of this case you already have quite a strong opinion as to the

guilt or innocence of the defendants?

A. Yes, sir.

Q. Which would remain with you unless evidence was introduced to change it? A. Yes, sir.

Q. And if there wasn't evidence introduced to change it, it would affect your judgment?

A. If it wasn't changed it certainly would.

Q. So that would necessarily affect your verdict, would it not? A. Yes, sir.

Q. Unless there was some evidence in the case strong enough to change your present opinion your verdict would be affected by your opinion?

A. Yes, sir.

Mr. GRIGSBY.—We challenge the juror for cause.

(Questions by the COURT.)

Q. Mr. Pearson, you didn't hear any of the evidence in this case in court? A. No, sir.

Q. Have you talked with any of the witnesses who testified in this case? A. No, sir.

Q. Just talked generally with people outside?

A. Yes, sir.

Q. Is your opinion a fixed opinion, or just an impression?

A. It is—I would call it a fixed opinion.

Q. Do you think that opinion can be removed?

A. Oh, yes. [47]

Q. You think you could prepare to go into the jury-box and give the defendants a fair, just and impartial trial without regard to any opinion or the impressions you have? A. Yes, sir.

Q. According to the evidence? A. Yes, sir.

Q. You will swear to that? A. Yes, sir.

Q. And throw aside all these impressions, everything that has been said to you? A. Yes, sir.

Q. And give the defendants a fair, just and impartial trial? A. Yes, sir.

The COURT.—I think the juror is competent.

(Questions by Mr. GRIGSBY.)

Q. You say, Mr. Pearson, that that opinion would require some evidenec to remove? A. Yes, sir.

Q. And that if no evidence was offered having a tendency to change your present opinion then your present opinion would affect your verdict?

A. I don't know as I just understand you.

Q. Well, you have an opinion now as to the guilt or innocence of the accused? A. Yes, sir.

Q. Which would require evidence to change?

A. Yes, sir.

Q. Now, if no evidence was offered having a tendency to change your present opinion then your present opinion would affect your verdict?

A. Yes, sir, if there was no evidence to change it.

Q. In other words, if that opinion should be that the defendants are guilty you would have to have evidence put in in their [48] behalf in order to lay aside your opinion.

Mr. SAXTON.—If the Court please, I object to that.

Mr. GRIGSBY.—I suppose that it was that way.

Mr. SAXTON.—I know that is what you suppose. I don't think he has any right to inquire.

Mr. GRIGSBY.—I withdraw the question.

Q. If that opinion of yours should be that the

defendants are innocent then the Government would be required to put in some evidence to change that opinion?

Mr. SAXTON.—We object to that as just another way of trying to find out what the juror's opinion is.

Mr. GRIGSBY.—The answer is susceptible of being answered by yes or no.

The COURT.—Answer the question.

A. Yes, there certainly would have to be evidence to remove that.

Q. No matter which way the opinion is?

A. No matter which way the opinion is.

Q. So in the absence of evidence offered either for or against the defendants then your present opinion would affect your verdict? It would remain with you and affect your verdict?

A. No I don't know as it would.

Q. Didn't you say so awhile ago?

A. Well there would have to be evidence to change that. I would go according to the evidence given on the stand by the witnesses.

Q. You are not very anxious to sit on this case?

A. No, sir.

Q. You prefer not to? A. Yes, sir.

Q. Are you the Jury Commissioner of this court?

A. No, sir.

Q. You are not? A. No, sir. [49]

Q. How long have you known Ed. Johnson?

A. Oh, I have never known him personally, just know him to speak to him when I meet him on the street, I don't know how long I have known him.

Q. Did you know him when you were on the city council? A. I don't know as I did.

Q. Have you any bias or prejudice for or against Johnson? A. No, sir.

Q. Have you any prejudice against gambling aside from it being a crime?

Q. Yes, sir, I have. I am prejudiced against gambling.

Q. Have you any opinion as to the general reputation of any of the defendants as to being gamblers? A. Only what I have heard.

Q. Well that is the way you get reputations, you know. Have you any opinion as to their reputation from what you have heard?

A. Yes, I must say I have.

Q. And would that opinion as to their reputation affect the amount of evidence you would require?

A. No, I don't know as it would.

Q. Now what do you mean by a fixed opinion, Mr. Pearson? You say your opinion is a fixed opinion.

A. Well, if there is nothing comes up to change it.

Q. Then you are in a state of mind where you could already render a verdict if nothing came up to change your opinion? A. Yes, sir.

Q. You think your knowledge of the reputation of some of these defendants might affect you in passing on the case?

A. I don't know, I don't know as it would.

Q. Now supposing, Mr. Pearson, the evidence should show that these defendants were found with cards and chips on the table in the act of playing some game,—Mr. Johnson for instance,—and sup-

posing somebody walked in on Mr. Saxton [50] in the same predicament. Would you require any more evidence to prove that Mr. Johnson was playing for money than you would that Mr. Saxton was, or less? A. No, sir.

Q. You would require the same amount of evidence? A. Yes, sir.

Q. There would be no presumption in your mind against Mr. Johnson? A. No, sir.

Q. You know Mr. Saxton, don't you?

A. Yes, sir.

Q. You are a member of the same church?

A. Yes, sir.

Q. Have any social relations with him?

A. Only just in a general way.

Q. Do you sing together in the same performances? A. Yes, sir.

Q. And are you in this next attraction that is coming off? A. Yes, sir.

Q. With Mr. Saxton? A. Yes, sir.

Q. And you will sing together the same lullabys?

A. I don't think you would call it hardly that.

Q. Do you like his voice?

A. Fairly well, yes, sir.

Q. Do you think on account of that friendship and association with him, it would have a tendency to make you favor the Government?

A. No, I don't think it would.

Q. You think if you went on that jury and returned a verdict of not guilty you could unhesitatingly go up to those rehearsals and join in the chorus? A. Yes, sir.

Q. It wouldn't affect you at all? [51]

A. No, sir.

Q. Now you are sure you have a fixed opinion as to the guilt or innocence of some of the defendants. I will ask you if you was charged with the crime of gambling if you would be satisfied to be tried by a juror in your present frame of mind as regards this case? A. Well, no, I don't think I would.

Q. Do you think it would be fair to be tried by jurors in your present frame of mind? A. No, sir.

Q. Supposing every juror on this panel had your opinion in this case, do you think that these defendants would have a fair trial? A. Well—

Q. Would you call that a fair trial?

A. If they go strictly according to the evidence.

Q. You know better than anybody what your frame of mind is. A. I think I would.

Q. Supposing every juror here had your present fixed opinion relating to the guilt or innocence of these defendants, and you were the defendant, would you be satisfied to be tried by that kind of a jury?

A. I would if I could prove I was innocent.

Q. If you could prove you were innocent?

A. Yes, sir.

Q. So the burden would be on you, the defendant, to prove your innocence. Do you consider the defendant should be required to prove he is innocent?

A. No, sir.

Q. Well you are in a state of mind, so far as regards this case, Mr. Pearson, where the defendants are called upon to prove their innocence to change your mind, aren't they?

A. Well, no, I don't think so. [52]

Q. Well he has got to offer some evidence opposed to your present opinion? A. Yes, sir.

Mr. GRIGSBY.—We renew the challenge, if the Court please.

Mr. SAXTON.—I just want to ask the juror one question.

Q. (By Mr. SAXTON.) You say you have an opinion from what you have heard about the case. Now the question is whether or not you can lay that opinion aside and try this case wholly upon the evidence that is produced upon the witness-stand under the instructions of the court and totally disregard any opinion you may now have? A. Yes, sir.

Q. You could do that? A. Yes, sir.

Q. And will do that if accepted as a juror?

A. Yes, sir.

Mr. SAXTON.—I think the juror is competent. (Questions by the COURT.)

Q. The law presumes that a man is innocent until he is proven guilty of a crime beyond a reasonable doubt. Are you satisfied in your own mind you can go into the jury-box with the presumption?

A. Yes, sir.

Q. And give the defendants a fair, just and impartial trial on the evidence? A. Yes, sir.

Mr. GRIGSBY.—If the Court please, the juror can answer those questions propounded by the court which are the general questions as to the qualifications of jurors which conditions must be fulfilled to qualify him, [53] but to ascertain his real state of mind one must go a good deal further than to ask

him those questions. Now a careful examination of the juror must convince anyone that if all jurors were in his state of mind the defendants could not have a fair trial. Now there are plenty of jurors here probably without any opinion in the case. We feel that we should be tried by jurors without any present opinion, if possible. The Court has large discretion in this matter and we think the Court should exercise his discretion in sustaining this challenge as to Mr. Pearson. Mr. Pearson has an opinion which will abide with him unless evidence is offered to remove it. He has even stated that defendants could get a fair trial before a jury composed of jurymen like him if he could prove he was innocent. This shows his state of mind more than the questions propounded by the Court. The court put it up to the juror: "If sworn as a juror can you lay aside any opinion you may have and try this case wholly upon the evidence that is produced upon the witness-stand and the instructions of the Court and disregard everything else, if sworn to do so?" and he says "Yes," because that is his duty as a citizen to do it. He may think he can do it but when you examine him as to his state of mind he shows himself to be in such a state of mind that he cannot do that, notwithstanding he qualifies under the Court's questions. We don't think we could get a fair trial with jurors in that state of mind. He says he has an opinion which would require evidence to change. That disqualifies him clearly.

Mr. SAXTON.—If the Court please, it is true that some of the juror's answers, notwithstanding

the technical terms and court procedure, are somewhat inconsistent with his statement that he could try the case and disregard the opinion that he now has. The fact that it requires some evidence [54] to remove this opinion doesn't disqualify him. Now the juror didn't go into the nicety of the question as to who introduces the testimony. If the Government fails to make out a case it means the same thing to the juror as if the defendant proves himself innocent. I say he don't distinguish,—I think that is apparent,—those niceties that lawyers do in the matter. He has stated that he recognizes that the defendants are presumed to be innocent. Of course when you start in on the trial that presumption exists in his mind. Now he has an opinion and he says that he can lay that aside and try the case fairly upon the evidence as introduced, totally disregarding the opinion that he has and that is all the statute requires. Whenever he satisfies your Honor he can do that, and will do that, that shows him qualified.

Whereupon the Court overruled the challenge, to which ruling the defendants excepted and an exception allowed.

Whereupon defendants excused the juror Pearson peremptorily.

Whereupon Nels Swanberg was called, sworn, examined and excused for cause.

Whereupon Harold Stokes was called, sworn, examined and excused for cause.

Whereupon W. R. Hayes was called, sworn, examined and passed for cause.

O. W. Bourrette was then excused on peremptory

challenge of plaintiff.

E. W. Carleton was then called, sworn, examined and excused on peremptory challenge of defendant.

Whereupon J. G. McDougal was called, sworn and examined and passed for cause.

Whereupon Otto Halla was excused on peremptory challenge of plaintiff. [55]

Whereupon Clarence Riggs was called, sworn, examined and passed for cause.

Whereupon George Watson was excused on peremptory challenge of defendants.

Whereupon Carl Hereim was called, sworn, examined and excused for cause.

Whereupon Henry Peterson was then called, sworn, examined and passed for cause.

The jury being completed the following proceedings were had:

Mr. GRIGSBY.—At this time in view of the Court overruling my challenge to the juror Pearson, the defense offers to exercise another peremptory.

The COURT.—Overruled.

To which ruling the defendants excepted and an exception allowed.

Whereupon the following jurors were sworn to try the case: Wm. Loerpabel, John Little, David Leljerath, J. P. Britzius, D. B. Camp, W. Quigley, A. A. Chagnon, Thomas Hull, W. R. Hayes, J. C. McDougal, Clarence Riggs and Henry Peterson.

F. M. Saxton stated plaintiff's case to the jury, defendants waiving any statement. Whereupon the following proceedings were had:

Testimony of Philip Holland, for the Government.

PHILIP HOLLAND, a witness called on behalf of the prosecution, having been duly sworn, testified as follows:

My name is Philip Holland. I am a United States Deputy Marshal. Have held that position since July, 1914. I was deputy marshal on the 5th of January of this year. I recall the defendants in this case being arrested. It was on January 5th, 1916, on Wednesday, in the building on Front Street now known as the Arctic Billiard Parlors. The arrest was made on the ground floor in the back end of the building in the billiard-room. There is a billiard and pool table **[56]** in there. There is a partition between that room and the cigar-store with swinging doors. The room where the arrest was made was back of the cigar store. There is a partition between the cigar store and the billiard-room. I happened to go to the Arctic Billiard Parlors that evening for the reason that about nine o'clock Mr. Nelson came to my office downstairs here and stated—

Mr. GRIGSBY.—(Interrupting.) Object to anything Mr. Nelson stated on the ground that the conversation was not in the presence of the defendants, or any of them.

The COURT.—Overrule the objection.

To which ruling the defendants excepted and an exception allowed.

WITNESS.—(Continuing.) Mr. Nelson came up and got me and stated, "You can get them down

(Testimony of Philip Holland.)

there now," and I went down there with him. He went down there ahead of us. I got deputy marshals Terrell, Reed and Miller. They went down there. We went in the front way. I went to one table, Mr. Miller went to another, Mr. Terrell came in behind us, and Mr. Reed stayed out at the front door. I stepped to the table where Mr. Johnson was sitting at and told them they were under arrest. Mr. Miller stepped to the other table that Mr. Laird was at and put them under arrest. There were checks and cards on the table there. I could not state who were at the "poker-table" except Mr. Laird. They were playing "pangingui" at the table I was at. Mr. Johnson, Mr. Novosel, Mr. Kolbetitz, Mr. Pierson, and Mr. Mason were sitting at the "pangingui-table." I will have to examine my memorandum again. (Witness refers to paper.)

Mr. GRIGSBY.—We object to the witness referring to any memorandum.

The COURT.—Overruled.

To which ruling the defendants excepted and an exception allowed. [57]

(Witness continuing, reading from memorandum.) And Mr. Hanson. The memorandum I refer to is something made after the persons arrested came to the jail. These men at the "pangingui-table" were sitting around the table, had cards in their hands and chips in front of them. There was a big pack of cards in the center of the table and cards in their hands. There were checks right in front of them, in front of each individual player. There

(Testimony of Philip Holland.)

might have been checks out in the center of the table, but I didn't notice that. They were playing "pangingui" at that table. You use four or five or seven decks of cards in playing "pangingui," it depends upon the number of people playing. The eights, nines and tens are taken out of the decks. I took possession of the cards and chips that were on that table. (Witness is handed a bunch of cards.) Yes, those are the cards I turned over to the Commissioner's court.

(A bunch of cards offered and received in evidence and marked Plaintiff's Exhibit "C.")

WITNESS.—(Continuing.) I also took in my possession the checks and chips that were on this "pangingui-table." (Package of checks or chips handed to witness.) Yes, these are the checks I got at that time. They were before each of the players at the "pangingui-table." There might have been a few out in the center of the table but I am not positive as to that.

(A package of checks offered in evidence.)

Mr. O'NEILL.—I would like to examine him before these checks are admitted.

Q. (By Mr. O'NEILL.) Mr. Holland, where did you get those checks?

WITNESS.—(Continuing.) On the table, on the "pangingui-table." I did not put any specific mark of identification upon any of those checks nor have them in my exclusive possession from the time I took them until the present time. I took them and put them in my pocket until we got to the jail and

(Testimony of Philip Holland.)

then I put them in that sack and I left them there in the jail and [58] turned them over to the Court the next day. I left them with the jailor. I think Mr. McKay was the jailor that night. I left them at the jail. I don't recognize the bag. It was one similar to that and the checks were similar to those.

Q. You could not swear those were the specific checks? A. Checks similar to these here.

Mr. O'NEILL.—We object to the admission of the checks upon the ground that there is no foundation laid and no proper identification.

The COURT.—Objection overruled.

To which ruling the defendants excepted and an exception allowed.

(Paper bag of checks received in evidence and marked Plaintiff's Exhibit "D," being an assortment of orange and blue paste-board checks or chips with the following words stamped or printed thereon:

On the orange checks or chips "The Arctic, good for 12½¢ in trade. A. C. Laird, Prop."

On the blue checks or chips "The Arctic, good for 25¢ in trade. A. L. Laird, Prop.")

(Witness continuing, on direct examination.) I arrested these parties at that time before they left the room. There were several people standing around at the time besides the defendants. The people at the other table, at the "poker-table" were also arrested. Mr. Mason and Mr. Hanson were at the "pangingui-table." They were arrested at that time. Charles Mason and A. Hanson. The defend-

(Testimony of Philip Holland.)

ant Gumaer was arrested at that time. I think they registered him as "Gunard" at the jail. There were two games going on when I went into that room, "stud poker" and "pangingui." Mr. Miller went to the "stud poker" table. Defendant Laird was there when I went in. It was about twenty feet from the door into the billiard-room before I got to the table. This occurred in the municipality of Nome on the 5th day of last January.

Cross-examination by Mr. GRIGSBY.

I have lived in Nome since the 14th day of June, 1914. I was here in 1900 the first time. I don't know the game "pangingui." I have seen it played. I have never played it nor [59] observed it played very frequently. The way I know the game I describe as "pangingui" is because they play with ten cards and make spreads the same as in coon-can or something of that kind. I probably cannot give any explanation as good as you can. I cannot explain it. I have never played "rum." I have seen it played. It is played by making spreads the same as in "coon-can," yes, sir, the same thing. They do make spreads in "coon-can"; yes, sir, they take out the eights, nines and tens in "coon-can." Yes, sir, there are cards in the center of the table in "coon-can" and they may use chips. In "coon-can" however you only play with one deck, you play "pangingui" with sometimes five, six or seven decks, depending up on the number of players. I have never seen "coon-can" played with more than one deck. I have never played "coon-can" but have

(Testimony of Philip Holland.)

seen it played. I have never played "coon-can" or seen double "coon-can" played. The way I designate this game as "pangingui" is because the eights, nines and tens were taken out and there were cards in the center of the table and they were making spreads.

Q. Now, who made a spread?

WITNESS.—(Continuing.) They didn't have any time after I got there, nobody that I saw, I didn't see any spreads at that time. No, I didn't identify that game by the fact that somebody made a spread. They had cards in their hands. No, Nelson didn't tell me they were playing "pangingui." I knew because I saw their cards and chips in front of them. It could not have been any other game. I have never played "pangingui" but I have seen it played and know how it is played. I could not play a good hand of it, no, sir. It was "pangingui." I am sure of it. It could not have been "rum." I do not know the difference between "rum" and "pangingui." I don't know anything about "rum." I know "pangingui" but I don't know anything about "rum." It wasn't "rum" it was "pangingui." I told you my belief. **[60]** I happened to go down to this billiard-hall that night because Nelson came up and told me. I had met him before. Probably forty or fifty times previous to that. I expected him up. I had had a conversation with him about this before, shortly after the first of the year and I knew that he had been down to this place on other occasions. He had not reported

(Testimony of Philip Holland.)

any conditions he found down there. I saw him a couple of times before the 5th of January. Once after the first of January. I had an understanding with him. I had no talk with him about his going down there to collect evidence. He said he would come up and get me. This conversation was on the second or third of January. He said he would come and get me when they were playing down there. At that time I knew he was in the employ of E. R. Jordan, the United States Marshal. Mr. Jordan told me so on the trail when I met him this side of Bonanza. He told me Nelson was in his employ and would make reports to me and what he was employed for. That he was employed to look up gambling conditions in Nome. He did not tell me what place he was to look up nor mention any particular place. Mr. Jordan was then on his way to St. Michael and told me that Nelson would report to me and instructed me to take charge of that particular matter. Mr. Miller was the chief deputy but this particular matter was turned over to me. That was the reason Nelson reported to me instead of to the chief deputy. I arrived in Nome on the evening of the first of January and saw Nelson I think the next day. I don't remember whether in the office or on the street. He said he would go down there and look around. He didn't say where. On the night of January 5th he came back. He came back the first time on the second. The substance of the conversation I had with Nelson the first time I saw him after I got back from out of town was to the

(Testimony of Philip Holland.)

effect that he would tell me, he would come up and tell me when he found them gambling. He did not refer to any particular person. I didn't have any conversation with him in regard to any **[61]** particular place at all. He said he would come up and tell me, no place was mentioned. I had no idea what place he was watching. I didn't know whether he was watching the Winsor,or Barney Gibney's or a place on Steadman Ave. in the Realty Building, or the Dunham Building or Yorkey's. I didn't know there were that many places in town. I didn't know that there were more than that. He might have referred to the Mumm Club and gone there too, I don't know. I had no definite idea what place "Black Nels" was referring to when he said, "I will go down and let you know when they are gambling." I had several ideas.

Q. What were your several ideas?

Mr. SAXTON.—Objected to. What his ideas were had nothing to do with this.

The COURT.—Objection sustained.

To which ruling the defendants excepted and an exception allowed.

WITNESS.—(Continuing.) There are several places he might have gone to in town. Several cigar-stores where they played cards at times. He could have gone to the "Glue Pot." No, not to Bruner's that wasn't open then. He could have gone to Yorkey's and Barney Gibney's, I don't know what he referred to. I didn't ask him. He told me he was working on the matter, I didn't ask

(Testimony of Philip Holland.)

him where he was working nor what he was working on. He came back on the 5th about 9:30 in the evening. He said, "You can get them now." He did not say who it was I could get. He told me where it was, he said, "Down to the Winsor." That was the first time I knew the Winsor was the place. When I went into the Winsor, now called the Arctic Billiard Parlors I went through a double door in the cigar-store. There is an ordinary cigar-stand there with show goods in it, and the cigar-store is about 10x25 feet and then there are some swinging doors without any latch on them at all opening into the billiard-hall. No other obstructions into the billiard-hall. The billiard-hall is a large room about 40 by 25 feet. There are two tables, pool or billiard-tables **[62]** there and one or two card-tables setting around. There were some people there sitting playing cards. There were no obstructions to our going in at all, everything was wide open, and I saw some men playing cards at one table. I was on the other side of the room from where Mr. Miller went so I don't know what was being played at that table. I went there to where they were playing "pangingui" to the best of my belief. They had checks in front of them and it looked like they were playing for them. I do not know of my own knowledge what those checks represented. It was just as if I went into Yorkey's or the "Glue Pot" and they had checks in front of them, that is all I know of my own knowledge and all I claim to know. Ed. Johnson, Frank Koibetitz, Chas. Mason, A.

(Testimony of Philip Holland.)

Hanson, John Novosel and Alfred Pierson were sitting at the "pangingui-table." I am willing to swear to it. I am equally positive as to each one of them that they were all present at that table and were participating in the game. We came in there so quick and told them to drop their cards and I put them all in the middle of the table and they had cards in their hands and I made them put them down. I would not swear which men had cards in their hands. They were all sitting at the table. To the best of my belief they all had hands, I would not positively swear to it. I will swear that each of the ones I mentioned was at that table. I did not make a note of those that were at that table while they were there. We didn't get their names until they came to the jail. There were ten arrested altogether and we took them in a body to the jail and Mr. Miller made the note. He booked them there.

Q. Did you make a memorandum of it?

WITNESS.—(Continuing.) Only what he gave to me at that time. He booked four people he had at his table and I swore that the other people were sitting at my table. I made the memorandum that I have referred to right after that at the jail but not until **[63]** they were in jail. I made the memorandum from the jail-book. We had Koibetitz before and we had him before as "Quebec Johnson" and we could not tell who they were from the different names they gave. I did not make the entries in the jail-book. I swear that Johnson was playing "pangingui" and also Pierson, Mason, Koibetitz,

(Testimony of Philip Holland.)

Hanson and Novosel. I saw nobody playing at the "stud poker-table" because I didn't go over there. I saw Mr. Laird sitting there but I did not go over there. I had no other reason for going down and making this arrest than that Mr. Jordan had instructed me that he had employed this man Nelson who would report to me. I had no prejudice against Johnson or any of these defendants. I never threatened Johnson with arrest. I did have a conversation with Johnson in the Eagle Saloon, the saloon conducted by Henry Burgh, formerly the Hunter Saloon, shortly before this. It was on Christmas Eve in the presence of Johnson, myself and Perry Moore. I did not at that time and place state to Johnson, "I am going after you and I am going to get you," or words to that effect. I had been at Johnson's place before on the previous evening and Johnson come in there. He was not at home when I first called. I didn't threaten him in his place. I did not tell him I was going to get him. I had no particular prejudice against Johnson at all. I did not testify on the former trial of this case that I never was acquainted with Nelson otherwise known as "black Nels" until the evening of this raid. I am sure of that. I never discussed this matter with him at any time. I talked about it but I didn't discuss it. He said he would come up and get me but that isn't discussing it. I did not talk with him about it. I never talked with him.

Q. Did you not state on the former trial of this case in the presence of the Judge of the court and

(Testimony of Philip Holland.)

Mr. Saxton and the jurors assembled, that you never had talked over the matter of this gambling with Nelson until the night he came for you to make [64] this arrest, did you so testify?

A. I never talked with him.

WITNESS.—(Continuing.) I never talked with him except about the second of January. I don't know whether I made that exception on the former trial or not. I don't remember.

Q. Now after Nelson had made this report about this particular place did you direct him to look up other places?

Mr. SAXTON.—Objected to as immaterial.

Mr. GRIGSBY.—It shows the interest of the witness and is proper cross-examination.

The COURT.—Objection sustained.

To which ruling of the Court defendants excepted and an exception allowed.

WITNESS—(Continuing.) I did not talk with him after this at all except in a casual way to say how-do-you-do, that is all.

Q. Did you ever ask him if he had ferreted out any other gambling in Nome?

Mr. SAXTON.—Objected to as immaterial.

The COURT.—Objection sustained.

To which ruling of the Court defendants excepted and an exception was allowed.

WITNESS.—(Continuing.) I do not know how long he continued in the employ of the marshal after I made this arrest except as it was brought out in the former trial. He never made any more reports

(Testimony of Philip Holland.)

to me of violations of the law.

Q. Did he ever make any report about Barney Gibney's place?

Mr. SAXTON.—Objected to as immaterial.

The COURT.—Objection sustained.

To which ruling of the Court defendants excepted and an exception was allowed.

Q. Did he ever make a report about a gambling resort on Steadman Avenue?

Mr. SAXTON.—Objected to as immaterial. [65]

The COURT.—Objection sustained.

To which ruling of the Court defendants excepted and an exception was allowed.

WITNESS.—(Continuing.) He was never in the office to my knowledge after this arrest.

Q. So after the arrest of these defendants you consider that the gambling evil had been suppressed?

Mr. SAXTON.—Objected to as calling for the conclusion of the witness.

The COURT.—Objection sustained.

To which ruling of the Court defendants excepted and an exception was allowed.

Redirect Examination.

Q. (By Mr. SAXTON.) You stated on cross-examination, Mr. Holland, that you did have a conversation with Mr. Johnson in the Eagle Saloon in the presence of Perry Moore. What was that conversation?

Mr. GRIGSBY.—Objected to, if the Court please,

(Testimony of Philip Holland.)

until some evidence of it is shown. It is not proper evidence in chief.

Mr. O'NEILL.—Objected to as not redirect examination.

The COURT.—Overrule the objection.

To which ruling the defendants excepted and an exception was allowed.

WITNESS.—(Continuing.) I was in the Winsor Billiard Parlors on Christmas Eve. There was a kind of hub-bub when I got up there, several men were sitting around tables. I came down to Johnson's place. Johnson came in there and I told him the next time I came up I would get the tools, that they would not ring buzzers on me and laugh around at me, I would get the tools, that is all I said.

Q. When you made the arrest on the night of the 5th of January last did you afterwards go back and make further search of the premises? **[66]**

Mr. O'NEILL.—Objected to as incompetent, irrelevant and immaterial, *res inter alios acta,* no part of the *res gestae,* no connection shown and no foundation laid.

The COURT.—Objection overruled.

To which ruling of the Court defendants excepted and an exception was allowed.

A. I did. I searched the lower floor and I searched the upper floor. I got out a search-warrant.

Q. What were you looking for?

Mr. O'NEILL.—Same objections on same grounds.

The COURT.—Overruled.

To which ruling of the Court defendants excepted

(Testimony of Philip Holland.)

and an exception was allowed.

A. Well, checks, dice, gambling tools. I found under that search-warrant on these premises and took in my possession playing cards and checks and gave them a receipt for them.

WITNESS.—(Continuing.) Yes, those checks in that drawer you showed me are the checks I referred to, to the best of my belief. I took them with me and turned everything over to the court on the day of the trial. These are the checks and cards.

(Drawer of checks and cards offered in evidence.)

Mr. O'NEILL.—Objected to on the ground that they are immaterial and not connected with the crime, and calculated to prejudice the jury against the defendants.

The COURT.—Objection overruled.

To which ruling of the Court defendants excepted and an exception was allowed.

(Drawer containing boxes of playing cards and decks of playing cards, assortment of chips and checks and a coin rack admitted in evidence and marked Plaintiff's Exhibit "C.") [67]

WITNESS.—(Continuing.) I also took into my possession at that time two tables. I found the checks and cards in a locker in the wall right back of where they were playing poker, back of the poker-table in the billiard-room. The locker was set in the wall with a lock and key. The tables I took in my possession were the two that were being played on at that time. (Two tables being produced the witness continued.) Yes, those are the tables I took in my

(Testimony of Philip Holland.)

possession at that time. That one over there they were playing "pangingui" on. The poker-table was that one with the green cloth. The "pangingui-table" is the one with the light cloth on.

(The green cloth table admitted in evidence, marked Plaintiff's Exhibit "F." The light cloth table received in evidence and marked Plaintiff's Exhibit "G.")

Recross-examination.

In that conversation I had with Mr. Johnson I told him I was going to come up and get his tools. That was Christmas Eve. That was before I knew that Nelson had been employed or was going to be employed. Yes, sir, before I knew Nelson I had already threatened Johnson that I was coming up to get his tools if that is what you call a threat. I made that statement. I had already been in his place and told him the next time I came up there there would be no buzzers ring on me or anything like that, that I was going to get his tools. I walked in there like anybody else on Christmas Eve in a public place, I had no purpose whatever, absolutely none. Just went in to look around. I probably went in there to look around to ascertain whether gambling was going on.

Q. Did you or did you not go in there for that purpose? A. I went in to look around, yes, sir.

Q. So you were looking up gambling at that time yourself?

A. I went to look around, not at gambling, but if I saw it, yes, sir. [68]

(Testimony of Philip Holland.)

Q. Did you have it in your mind what you were looking for?

A. Yes, sir, I went to look around.

Q. At that time you were looking elsewhere in town? A. Yes, sir.

Q. What other places did you suspect?

The COURT.—Don't go into that.

Mr. GRIGSBY.—It is to show the prejudice of this witness. If he had a personal prejudice against the defendants I have a right to show it. (Argument.) If he knew of a dozen other places and he confines his attention to one it shows a personal animus against these defendants which I have a right to show to affect his credibility before the jury.

The COURT.—I rule it out.

To which ruling of the Court the defendants excepted and an exception was allowed.

WITNESS.—(Continuing.) Yes I told him on Christmas Eve in the presence of Perry Moore that the next time I came up there I was going to take his tools. Yes, sir, I did go up to Johnson's on January 5th and get some of the tools.

Q. And in order to fulfill your promise you swore out a search-warrant and went back and got some more of them? A. What was left, yes, sir.

WITNESS.—(Continuing.) My object in going back and getting these tables was to stop him from gambling. I have no duties of prevention of crime, just only as a peace officer.

Q. You went down to get these tables so as to have him bound over on the preliminary hearing until the

(Testimony of Philip Holland.)

grand jury met and in the meantime hold these articles to work a hardship on them?

A. No, I didn't do it.

Q. You swore out a warrant? A. Yes, sir.

WITNESS.—(Continuing.) They are still gambling down there to [69] the best of my belief. I believe they are. I went down and got these tables for the purpose of stopping them from gambling if I could. I got them to get evidence and to stop future gambling, both. I thought it was better evidence to have the tables here so they could see them. I don't know whether, if I swore to the jury that I saw a green-covered table they would believe me or not. I have heard you say that there are other tables here in Nome. I went and got Johnson's tables because I had just arrested him for gambling and put a charge against him so as to get evidence.

Q. Mr. Holland, will you explain to the jury your motive after you had arrested these defendants on the information given you by "Black Nels" and after the preliminary examination in which yourself and Miller and the other deputies testified, you caught them playing "pangingui" and "stud poker" and produced checks and cards they were playing with, what was your motive in going back and getting these tables?

The COURT.—I rule the question out.

To which ruling of the Court the defendants excepted and an exception was allowed.

WITNESS.—(Continuing.) I have been deputy marshal since the 14th day of July, 1914.

(Testimony of Philip Holland.)

Q. Have you ever gone to any place in Nome and seen tables before?

The COURT.—Rule the question out.

To which ruling the defendants excepted and an exception was allowed.

WITNESS.—(Continuing.) I have absolutely no prejudice against any of these defendants.

Whereupon court adjourned until 10 o'clock Friday morning, April 28th, 1916 [70]

And thereupon court convened Friday morning at 10 o'clock, April 28th, 1916.

PHIL HOLLAND, was recalled by defendants for cross-examination and testified as follows:

Among those present at the place where I made the arrest were N. B. Nelson, Charles Mason and A. Hanson. They were arrested together with the defendants. They were the three men who were defendants with these other defendants in the Commissioner's Court where the preliminary hearing was held. I testified at the preliminary hearing. I did not say anything there at the preliminary hearing about this N. B. Nelson having come up after me because I wasn't asked to. I am sure I was not asked. I was not asked if any two men asked me.

Q. Now, I will ask you, Mr. Holland, if at that preliminary examination which was held against these seven defendants and also Mason, Hanson and Nelson, known as "Black Nels," in the presence of these defendants and the United States Commissioner Frawley, on the 6th or 7th day of January, you didn't make the following answers to the follow-

(Testimony of Philip Holland.)

ing questions: "Q. Now who told you to go down there and make that arrest? A. Myself. Q. Nobody else? A. Well, I went around there once before. Q. Did anybody get you to go around there? A. No, sir." Did you make those answers to those questions? A. I don't remember.

Q. Did you make the following answers to the following questions: "Q. Did you have any information that they were gambling any there when you went in? A. I had been up there before—well yes, we had general information, in a general way, yes, sir." Did you make those answers to those questions? A. I think I did; yes, sir.

WITNESS.—(Continuing.) At that time I knew that Nelson, one [71] of the defendants right there before me, was the man who gave me the particular information which led me to go down there. I could not tell you why I did not say so when I was asked nor why I avoided that question.

Q. Was it because you wanted us to keep on thinking Nelson was one of the defendants so he could hang around my office and act as a stool-pigeon for further purposes?

A. I don't know whether he hung around your office or not, I could not say.

WITNESS.—(Continuing.) I knew that you (referring to Mr. Grigsby) was down there representing him as his attorney and that you asked me what led me to go down to this place and that I did not tell you.

(Testimony of Philip Holland.)

Redirect Examination by Mr. SAXTON.

I have no further explanations that I wish to make.

(Witness excused.)

Testimony of Frank C. Dean, for the Government.

Thereupon FRANK C. DEAN, a witness called for and on behalf of the Government, being duly sworn testified as follows:

Direct Examination by Mr. SAXTON.

My name is Frank C. Dean. I am the license clerk. Mr. A. C. Laird made application for and secured licenses for the Arctic Billiard-hall and the Arctic Cigar-store in what is known as the Winsor Building in Nome. The application for the cigar-store was made on the 23d of December last year. The application for the billiard-tables were made one on the 23d of December and the other on the 27th of December. The licenses were issued to Mr. Laird for the period of one year. There has been no transfer of them.

(No cross-examination. Witness excused.) **[72–73]**

Testimony of A. B. Miller, for the Government.

Thereupon A. B. MILLER, a witness produced and called on behalf of the plaintiff, was duly sworn and testified as follows:

Direct Examination by Mr. SAXTON.

My name is A. B. Miller. I am the chief deputy marshal for this district. Have held that position since the fall of 1914. I have been in the marshal's

(Testimony of A. B. Miller.)

office since July 14th, 1913. I was with Deputy Holland on or about the 5th of January this year when the defendants in this case were arrested. Deputies Terrell and Reed were also with me. Mr. Terrell is now on his way to St. Michael on official business. This arrest took place at the old Winsor Building on Front Street downstairs in a room back of the cigar-room, the second room back. In going in from the street you go in to the cigar-store first and there are doors from the cigar-store into this room, double swinging doors. There is a pool-table in there and card tables. Mr. Holland went in first and I followed him and a little behind me was Mr Terrell, Mr. Reed was in the outer office or room. As we entered the room we saw people playing cards at two tables. We went in there and placed them under arrest, took the cards and checks with us. We saw them playing at two tables. As we went in Mr. Holland placed them under arrest. He took charge of one table and I took the other table. At the table I was at they were playing "stud poker." Those playing at that table were Laird, Skorlich, Nelson, Gumaer and Elmer Adams. At the other table that Mr. Holland took charge of there were Ed Johnson, Alfred Pierson, John Novosel, Frank Koibetitz, Chas. Mason and A. Hanson. We arrested ten of those parties at that time. Elmer Adams was not arrested. He was left in charge of the building. They were playing "stud poker" at the table I went to, Laird, Skorlich, Gumaer, Nelson and Adams. You play "stud poker" with a regular deck of cards.

(Testimony of A. B. Miller.)

At this table the cards were lying in front of each player, one card faced down and the balance faced up. Laird was dealing in that game. They were playing for chips. A number [74] of chips were in the center of the table and some around each player. I gathered them up and put them in my pocket and later brought them into court. (A deck of cards handed to witness.) Yes, that is the deck.

(Deck of cards offered and received in evidence and marked Plaintiff's Exhibit "A.")

(Envelope containing checks or chips now handed to witness.)

WITNESS.—(Continuing.) I would say that these are the checks I took in my possession at that time.

(Envelope containing assortment of white, blue and red checks or chips with the following words stamped or printed thereon:

On white chips "The Arctic, good for 12½¢ in trade A. C. Laird, Prop."

On blue chips "The Arctic, good for 50¢ in trade, A. C. Laird, Prop."

On red chips "The Arctic, good for $1.00 in trade, A. C. Laird, Prop."—Received in evidence and marked Plaintiff's Exhibit "B.")

WITNESS.—(Continuing.) There were some other checks on the "poker" table at that time which were taken by Mr. Terrell. At the time of the arrest Mr. Gumaer gave his name as "Gunard," "B. Gunard," I think. I understand they were playing "pangingui" at the tabale Mr. Holland took charge of, but I didn't see them, I didn't pay any attention

(Testimony of A. B. Miller.)

to that table. I saw cards on that table. I could not say whether a single deck or quite a bunch. There were checks on that table. I didn't pay much attention to that table. I went to the other table. Mr. Holland had charge of that table.

Cross-examination by Mr. GRIGSBY.

I knew that there was going to be a raid just a little bit before ten o'clock that night. That was my first knowledge of a raid being contemplated. I am the chief deputy. Mr. Holland had charge of the conducting of this affair. He came after me and that was the first information I had about it. I did not know anything about these instructions from the marshal. Yes, sir, this is an ordinary looking billiard-hall, nothing to distinguish it from any other billiard-hall except the card tables that were in there. It is open, anybody can walk right in there into the [75] cigar store and then into the billiard-hall. I went in and saw some men engaged in playing cards at one table at the left side of the room beyond the two billiard-tables. They were in view from any part of the room. They were not in a box or anything like that. It is a pretty good-sized room and on either side of the room were men engaged in playing cards. I went to the table at the left as I went in and saw they were playing "stud poker" there. The play ceased the minute we stepped into the door and I did not see anybody do anything in that game, nor any play being made. I didn't see any handling of cards. If there was any handling of cards it was before I stepped in. How long before I don't know, but the cards all

(Testimony of A. B. Miller.)
lay in front of them. I have no doubt but what they could lay in front of them indefinitely if they laid them there once. I didn't see anybody playing the minute we passed in the door. When we passed in the door of course there was nothing doing. I didn't see them playing the game; no, sir. I judge that the game they had been playing just before coming in there was "stud poker." I have been acquainted with the game of "stud poker" for seven or eight years. I do not know any more about it now than I did before I made this raid. I knew the game before I made this raid at all, as much as I know about it now. The reason why I know it was "stud poker" was the position the cards were in. There was one card lying face down and the balance were faced up. The balance were four cards in front of each player. There were five all together. Each player had cards. Yes, sir, if I recollect correctly each player had five cards, one down and four faced up. There were in front of each player one card buried, as they call it, and four faced up. I believe I stated that in the former trial that each man had five cards, one faced down and four faced up. There were checks in the center of the table. I didn't count them and don't know how many. I know how "stud poker" is dealt, how they get the cards. They are dealt by the dealer one at a time. As I understand the game the man who is the highest [76] is the first man to bid and then they deal around again. The high man bids after the second card is dealt as I understand it. The first card is buried. Before anybody

(Testimony of A. B. Miller.)

gets cards each player has to ante, and then they deal a card around to each player after they have dealt the buried card and then the high man bets and everybody who wants to stay in that pot has to either call or raise his bet. Then when the third card is dealt around that occurs again so that if there were five cards in front of each player all five men must have stayed in the pot. Yes, sir, possibly that must have been a pretty good pot. Yes, sir, there was a good fair quantity of checks in the center of the table as I recollect. Yes, sir, there were still checks in front of each player. No, sir, notwithstanding there were five in the game and everybody had checks in front of them and everybody stayed to the finish nobody seemed to have tapped themselves. I am not a "stud poker" judge and don't know that that is something that doesn't happen once in four hundred and fifty million times. No, I didn't especially examine the hand in front of Elmer Adams. I don't know what his hole card was. No, I don't know what it is now but I can tell you outside. I am positive that the people engaged in that game were Mr. Laird, Mr. Koibetitz, Mr. Nelson, Mr. Gumaer and Elmer Adams and my recollection is that Mr. Pierson, the defendant present, was not engaged in that game but was at the other table playing "pangingui." I so testified at the preliminary hearing and also at the former trial here of this case and still say so.

(Witness excused.) [77]

Testimony of E. R. Jordan, for the Government.

Thereupon E. R. JORDAN, a witness produced for and on behalf of the plaintiff, being duly sworn, testified as follows:

Direct examination by F. M. SAXTON.

My name is E. R. Jordan. I am the United States Marshal. I have held that position since 1913. I know N. B. Nelson a witness in this case. Shortly prior to the arrest of the defendants in this case in January I had employed him to look up gambling matters. It was the last day of December. It might have been the 29th or the 30th, I am not sure. I was on my way to St. Michael when this arrest was made. I informed one of my official force, Deputy Holland of the fact that I had employed Nelson. I informed him between Safety and Solomon where I met him on the trail. I told Nelson to go down town and look up any gambling and report to Mr. Holland at the office. I paid him for his services. He was thirteen days in my employ. I paid him sixty-five dollars from my own private funds. Not Government funds, my own money.

Cross-examination by Mr. O'NEILL.

I have five deputies in my office. I don't know, I don't remember whether or not they were all busy about the latter part of December. I don't know whether they were busy prior to the time I left on that trip. Yes I do know very much about the internal affairs of my office. Mr. Miller was doing his regular duty about that time, also Mr. Holland. Mr. Terrell was working in the office.

(Testimony of E. R. Jordan.)

Q. Now did their regular duties about that time of the year consist of anything more burdensome than warming chairs?

A. Well, that is my business.

The COURT.—I don't want any more of that. It has nothing to do with this case.

Q. Why did you employ Nelson?

A. That is my business.

Q. Did you employ him as United States Marshal or as a private [78] citizen?

A. That is my business.

Mr. O'NEILL.—Well, that question will be my business.

The WITNESS.—Well, go ahead now.

Mr. O'NEILL.—I insist that that question be answered. I asked the witness if he employed Nelson as the United States Marshal or as a private citizen.

The COURT.—Ask him in what respect and how he employed him.

Q. How did you employ Mr. Nelson and in what respect?

A. I told him to go down and look up any gambling and report to the office. I did that in my official capacity.

Q. Why did you pay him out of your private funds? A. That is my business.

Mr. O'NEILL.—Now, if your Honor please, I am not going to stand for the impudence of this witness.

The COURT.—I don't think the witness is impudent. Take your seat! He has a right to pay his own money if he wants to.

(Testimony of E. R. Jordan.)

Mr. O'NEILL.—I have a right to know why he paid his own money to show the *animus* of the witness if any there be.

The COURT.—He has stated because he chose to do so.

Mr. O'NEILL.—He said it was his business. I want to know why he chose to do so.

Defendants excepted to the ruling of the Court in refusing to compel the witness to answer the question and an exception was allowed.

WITNESS.—(Continuing.) I never took it up with you Mr. O'Neill to find out whether or not the Department would or would not have allowed me any sum I might have paid to Nelson as an official. I don't know that the Department would not have allowed [79] that sum that I paid to Nelson. It is a part of my official duty as United States Marshal to investigate gambling in this community —if I see fit. If I see fit to investigate it it is my duty.

Q. And if you don't see fit it is not your duty?

A. That is my business.

WITNESS.—(Continuing.) It might have been a part of the duties of my deputies to investigate gambling in this community about the time I hired "Black Nels."

Q. You don't know whether it was or not?

A. That is my business.

WITNESS.—(Continuing.) I did not investigate Barney Gibney's place. I paid Nelson sixty-five dollars. I promised him five dollars a day.

Q. You said you gave him sixty-five dollars. Did

(Testimony of E. R. Jordan.)

you give him a promise as well?

A. If I did it is my business.

Q. Did you ever hear of the two hundred dollar mystery?

A. Well, when I look at you it reminds me of a mystery any time.

(Witness excused.) [80]

Testimony of F. J. Mielke, for the Government.

And thereupon F. J. MIELKE, a witness produced on behalf of the plaintiff, was duly sworn and testified as follows:

Direct Examination by F. M. SAXTON.

My name is Frank J. Mielke. I am acquainted with the property known as the Winsor Bath House here in Nome. Was formerly the owner. According to the records the property is still mine. I issued a deed to Mr. Johnson in the latter part of June, 1915, on the installment plan. That deed is placed in escrow on the installment plan. All installments have been paid to date. The deed is in escrow in Mr. Grigsby's safe. Under the escrow agreement Mr. Johnson, the defendant, is entitled to the possession of the building and entitled to the deed when he pays the balance of the money. I have no control over the place whatever at the present time.

Cross-examination by Mr. Grigsby.

All the installments have been paid to date. They were all paid in cash. There was a cash payment made at the execution of the deed and also monthly payments until the first of November, or thereabouts, and shortly after, about the 5th or 6th of November,

(Testimony of F. J. Mielke.)

there was a larger payment made. No payments have been made since and none have been due since.

(Witness excused.)

Testimony of Wm. Dougherty, for the Government.

Thereupon WM. DOUGHERTY, a witness produced on behalf of the plaintiff, being duly sworn testified as follows:

Direct Examination by Mr. SAXTON.

My name is Wm. Dougherty. I have held the position of patrolman of the city of Nome the greater part of the past year. I know the defendant Ed. Johnson. Have known him quite a few years. Sometime prior to the 5th day of January, 1916, the defendant Ed. Johnson, in my presence, made a statement as to his intention [81] with reference to carrying on gambling here in Nome. He said he was going to gamble. He intended to gamble.

Mr. GRIGSBY.—I didn't notice the question if your Honor please. I ask leave to have an objection entered on the ground it is too remote, doesn't tend to show whether or not the crime was committed on the 5th of January as charged in the indictment.

The COURT.—*Objected* noted and overruled.

To which ruling of the Court the defendants excepted and an exception allowed.

WITNESS.—(Continuing.) That statement was made somewhere along in October, 1915.

Mr. GRIGSBY.—We move the answer be stricken out as fixing the time too remote to have any bearing on this case.

(Testimony of Wm. Dougherty.)

The COURT.—Overruled.

To which ruling the defendants excepted and an exception was allowed.

Cross-examination by Mr. Grigsby.

That conversation took place on the street. Mr. Johnson spoke about gambling and said he intended to gamble. Claimed it was different with him than it was with other people on account of his being crippled so he could not get out and work as he used to do and that was his way of making a living. That was last October. I don't know the first time I told that to the District Attorney. The first time I remember of saying it in his presence was in the grand jury room. What I have just testified to is all that I stated in the grand jury room as near as I can recollect. I don't know how Mr. Saxton knew I had heard Johnson say that last October. I don't know whether I ever told anybody else. It was common talk,—not that Johnson had told me that but the remarks he passed. Yes, sir, the remarks he passed [82] to me. I think he had told other people about it. I think he told it in the presence of other people. I don't know whether those other people were called as witnesses on that subject. I don't know as anybody was there but ourselves when he talked to me. I cannot tell you how other people knew about this particular instance. I don't think I ever told it to Mr. Saxton. If I did it is so long ago I have forgotten. I remember when I was before the grand jury that Mr. Johnson told me this last October. I never worked a minute in my life for the marshal's

(Testimony of Wm. Dougherty.)

office. Never was asked to, have never been in Mr. Jordan's employ or rendered him any assistance at any time.

(Witness excused.)

Testimony of N. B. Nelson, for the Government.

And thereupon N. B. NELSON, a witness produced on behalf of the plaintiff, was duly sworn and testified as follows:

Direct Examination by Mr. SAXTON.

My name is N. B. Nelson. I live on Third Street in Nome, Alaska. I have lived in Nome since 1907. My occupation lately has been driving a team. I have worked for W. J. Rowe. I know the defendants in this case. I was present when they were arrested on or about the 5th of January in the Winsor Building or Arctic Billiard room or hall. I had prior to that time made arrangements with Marshal Jordan to act for him in hunting out gambling. I entered into his employ the 29th or 30th of December last year. I cannot recall the date this arrest was made. It was the first part of January of this year. According to my arrangement with Marshal Jordan I was to report to the marshal's office after I located gambling. I was to report when conditions were such that they could make raids. I was present when this arrest was made. It was between nine and ten [83] o'clock. Prior to that time I had notified the marshal's office. I went to this place first and sat in the "stud poker" game. Could not say positively how long. Afterwards quit the game and went to the marshal's office and saw Mr. Holland.

(Testimony of N. B. Nelson.)

Q. And what did you report to him?

Mr. GRIGSBY.—Objected to as calling for a conversation not in the presence of the defendants, or any of them.

The COURT.—Overruled.

To which ruling of the Court the defendants excepted and an exception allowed.

WITNESS.—(Continuing.) I reported that there was gambling down at the Arctic Billiard Hall and he could get them and then I went back and got into the game again. There were games going on when deputy marshals Holland and Miller came in. At the table I was at there was a "stud poker" game. That green table there (indicating) was the one I played on I think. There were playing "stud poker" at that time myself, Mr. Laird, Mr. Pierson, Mr. Gumear, Mr. Adams and one more. I don't recollect his name. It was one of these defendants here but I could not say which one. I cannot point him out. All the persons sitting at that table were playing "stud poker." That was what I was doing when Mr. Holland and Mr. Miller came in. You use cards to play "stud poker" with, one deck. We were playing for chips. They had a value of one dollar a stack. I bought into that game one or two dollar's worth. The other parties sitting at the table also bought checks. They paid a dollar a stack for them. They bought them from Mr. Laird. He kept them in a little hole in the wall, a little cupboard that fits in the wall in the same room. I saw the money paid for these chips. Nothing in particular happened when

(Testimony of N. B. Nelson.)

Mr. Miller and Mr. Holland came in. The game stopped. The men playing were placed under arrest. I was placed under arrest [84] at the same time.

Q. Now, with reference to who was present at your table, I will ask you if this gentleman sitting behind me was at your table?

(Counsel turns and points to one of the defendants.)

Mr. GRIGSBY.—Objected to as leading if the Court please.

The COURT.—Overrule the objection.

To which ruling of the Court the defendants excepted and an exception allowed.

A. He was.

WITNESS.—(Continuing.) Mr. Pierson was at the table. I could not recall who was at the other table except Johnson, Mason and Hanson and I presume they were playing "pangingui." I could not swear any more than that they were calling for their collections. They were playing "pangingui" with cards, using eight decks I believe and playing for one dollar a stack for chips just the same as the other game. They bought them from Mr. Johnson. I saw one man buy them. He paid money for them. They used the same kind of checks as that at the "stud poker" table. I had been playing "stud poker" there that same evening before that and had been playing for money or chips at that time of the same value, one dollar a stack.

Q. Had you ever been in there before and seen them gambling?

(Testimony of N. B. Nelson.)

Mr. GRIGSBY.—Objected to as calling for proof of another offense, and incompetent and prejudicial.

The COURT.—Overrule the objection.

To which ruling of the Court the defendants excepted and an exception allowed.

Mr. SAXTON.—I will state to the Court that it is proper to confine this part of the testimony to the owner and proprietor of the building. That is all we ask for.

WITNESS.—(Continuing.) I had seen them gambling pretty near every night for a week, playing "stud poker" and "pangingui." I [85] played. They played for chips of the same value on those nights. I don't remember whether I played "stud poker" all the time or "pangingui." The reason I didn't report these previous games was I didn't think there was any chance of making an arrest. I didn't think there was any chance for the marshal catching them in the act. I never saw Mr. Laird at those previous games, Mr. Johnson was there.

Q. From whom did you buy chips at those previous games?

Mr. GRIGSBY.—Objected to as being proof of another offense not connected with the crime charged in the indictment.

The COURT.—Overruled.

To which ruling of the Court the defendants excepted and an exception allowed.

A. Whoever might be running the game.

Q. Did you buy any from Mr. Johnson?

Mr. GRIGSBY.—Objected to as leading.

(Testimony of N. B. Nelson.)

The COURT.—Objection overruled.

To which ruling of the Court defendants objected and an objection allowed.

WITNESS.—(Continuing.) I think I did. At the time the arrest was made Mr. Laird was running that "stud poker" game. I could not say for certain who was running the "pangingui" game. Mr. Johnson was sitting at that table.

Cross-examination by Mr. GRIGSBY.

I was born in Denmark. I came to America in 1893. I am thirty-eight years old. I came to Alaska in 1902, first to Skagway in 1898, then went to the Spanish-American war; came back to Wisconsin and then went to Minnesota, from there to Seattle, Washington, from there to San Francisco, then back [86] to Washington, then to Nome. Stayed in Nome three years, then went back to Washington and returned to Nome again. I have been here ever since. Have never been in the Iditarod. Was in Marshall City one fall. Had no trouble up there, not the slightest. I have never been convicted of a crime. I have never tried to convict anybody of a crime before this. Never was on the witness-stand before.

Q. Have you ever done what is called "stool-pigeoning" before?

Mr. SAXTON.—Object to that.

The COURT.—Objection sustained.

To which ruling of the Court defendants excepted and an exception allowed.

(Testimony of N. B. Nelson.)

Q. Have you ever done any "gum-shoeing" or sleuthing?

Mr. SAXTON.—We object to the "gum-shoeing."

The COURT.—Objection sustained.

To which ruling of the Court defendants excepted and an exception allowed.

Q. Have you ever acted as an informer before?

A. I don't really know the meaning of your term.

Q. Do you understand what the term "stool-pigeon" means? A. Yes, sir.

Mr. GRIGSBY.—I will ask permission to use the language the witness understands, if the Court please.

The COURT.—Overrule the permission.

To which ruling of the Court the defendants excepted and an exception allowed.

Mr. GRIGSBY.—I have either got to use that or have an interpreter. I used the word "informer" and he said he didn't understand it.

The COURT.—(Addressing the witness.) Don't you know what the word "informer" means?

The WITNESS.—I have an idea what it means.

[87]

The COURT.—Counsel wants to know if you have ever been engaged in a business like this before?

The WITNESS.—I have not.

WITNESS.—(Continuing.) I have not stated to persons in Nome recently that I have been engaged in this business before, not that I know of. If I had so stated I don't know whether I would know it or not.

(Testimony of N. B. Nelson.)

Q. Why not?

A. Because I haven't been in the business. If I said it I certainly wasn't.

Q. If you stated it recently within a month or two you would know it, wouldn't you?

A. I don't know as I would because I never was before, and I don't see how I could say it.

WITNESS.—(Continuing.) There might be something the matter with my memory so I could not remember it. I never told a person in my life that that was not the first time I had "stooled." I could not say whether or not I had a conversation with Nick Barge or rather with Merrill Beatty, a bartender in the Nevada in the month of March, in the presence of Nick Barge and Ed Young, in which I told him that this was not the first time I had "stooled," that I had done it before and made quite a chunk of money out of it. I will not deny it because I was in there one morning when I was drunk and if I said it I never did. I have no recollection of saying it. I don't remember what occurred that morning. That was early in the morning. I could not say what time. I don't remember telling him anything at any time in the afternoon. Have no recollection of such a conversation. To the best of my knowledge I didn't have it.

Q. And when you are intoxicated that way do you sometimes tell the truth?

A. Then I don't know what I do. [88]

WITNESS.—(Continuing.) I am not sure I ever told the truth under those circumstances. I am sure

(Testimony of N. B. Nelson.)

that Mr. Pierson was playing "stud poker" with me. I cannot be mistaken about it. He was not playing "pangingui" that night when I was there. I am certain I did not see him playing "pangingui" when the deputy marshals came in and arrested him. He was playing "stud poker" with me, I am absolutely sure of that and if Mr. Holland and Mr. Miller, the deputy marshals, swore he was at the "pangingui" table playing "pangingui" they are mistaken. There were four others playing with me and one of them I cannot name. It was not Mr. Novosel, nor Mr. Mason, nor Mr. Gumaer. I think the gentleman you indicate was in the game. I don't know for certain. There were five men. I am not sure the fifth one was not Koibetitz; I will swear it was not Hanson. I am pretty sure that Gumaer was playing "stud poker" with me that might at the time of the arrest. I will swear he was playing that night. I am absolutely certain of that. At the former trial of this case and also before the grand jury I think I swore Mr. Gumaer was playing "stud poker" with me. I think he was, too. I swore to it at the former trial. The game was five handed at the time the deputy marshals came in. There was a pot being played for. I don't remember anything about that particular pot, nothing remarkable about it. I don't remember how many cards each player had. Nobody stopped to cash their checks. I didn't stop to cash mine in. I was in that pot. I could not say who was playing. The deal went around in that game. Every man was the dealer. Everybody had to ante before

(Testimony of N. B. Nelson.)

any cards were delt. The high man made the bet. If anybody else wanted to stay they had to either call or raise the bet or else turn their cards down. I could not say whether everybody had received five cards or not, or whether everybody was in the pot. [89] I don't know how many were in the pot. I don't remember anything remarkable about the pot. As far as I know there was a "pangingui" game going on over at the other table. I will swear they were calling for their collections, that is all. In my mind there was a "pangingui" game going on there at the other table; I will not swear to it positively. I cannot swear to anybody being over at that other table except Mr. Johnson, Mr. Mason and Mr. Hanson. I will not positively swear there was a "pangingui" game any more than I heard them calling for their collections, that is all I know about it. I was paying particular attention to the game I was in. I had been down there almost every night for a week previous to that and had been playing "stud poker" or "pangingui" for money every night. That is, not every night, but I played there several times, pretty nearly every night for a week, for five or six times. I was employed to look up gambling conditions.

Q. What were you waiting for, waiting for gambling conditions to improve before you made a report?

A. Waiting for a chance for the game to last long enough for the marshals to get down there.

Q. For five or six nights no game lasted long enough for you to go down to the marshal's office and

(Testimony of N. B. Nelson.)

get them and get back again?

A. There might have been time, it might have lasted that long, but it didn't look that way to me.

WITNESS.—(Continuing.) Yes, I was playing. I could not say how long I played at one time. Sometimes an hour, it might have been two hours. Several times I might have played two hours at a time before I made this report but I didn't think there was a chance for the marshal to have time to get down there before the game would break up.

Q. Well did the game break up every time you left it, was that [90] the reason you were afraid to leave it? A. I guess it must have been.

Q. You were the mainstay then in the game?

A. Well, I didn't know as I would have time to go to the marshal's office and get back again.

Q. If it had not been for you there wouldn't have been any game?

A. There were games going on when I came in.

Q. And you sat down there and played and then you were afraid to go up and tell the marshal for fear the game would break up. You tell this jury that do you? A. Yes, sir.

WITNESS.—(Continuing.) Yes, I was down there five or six nights gambling, nearly every night, and the only reason I didn't report the existence of this gambling to the marshal was for fear it would break up while I was doing it. Yes, Mr. Jordan made the arrangements with me. He told me he would give me five dollars a day to look up gambling in Nome. That conversation occurred about the

(Testimony of N. B. Nelson.)

30th or 29th of December, I could not state which. It was in his office. That is all the instructions he gave me. He didn't tell me what I should do to find out if they were gambling. He told me when I got the information to report it to Mr. Holland. He did not tell me to get into the game nor to play; simply told me to make reports to Phil Holland whenever I thought there was a chance to arrest them. I don't know whether I so testified in my last examination.

Q. Didn't you testify in your former examination, on the former trial of this case, that all he told you to do was to look up gambling in the Town of Nome and report to Phil Holland?

Mr. SAXTON.—We object to this. This is reduced to writing and signed by the witness and it is improper to ask this witness what he testified to on the former examination [91] without exhibiting to him the writing.

Mr. GRIGSBY.—Well, where is the writing? I haven't any.

Mr. SAXTON.—I would like to ask the witness a question upon this point.

Mr. GRIGSBY.—We certainly object.

Mr. SAXTON.—We want to show this witness' testimony has been reduced to writing, that he has read it over and signed it and that is all I want to show, if the Court please, by the witness. I want to ask him those questions.

Mr. GRIGSBY.—I have a right to call his attention to any former statements made by him at any

(Testimony of N. B. Nelson.)

time or place which may be inconsistent with his present testimony. It has no reference to any written document. (Argument.) I may want to use that paper to impeach him and it would destroy our purpose to let him read it over and fortify himself against my questions. (Argument.) The statements were oral, they were not in writing, the District Attorney had them transcribed afterwards.

Mr. SAXTON.—If the Court please, that section there was taken from the Oregon law. The purpose of this question is certainly to lay a foundation for impeaching the witness otherwise it has no purpose at all.

Mr. GRIGSBY.—Certainly that is the purpose of it.

Mr. SAXTON.—It was held in State vs. Crockett (reads): The Court has held that where it has been reduced to writing the witness cannot be questioned as to that without submitting the writing to him. It isn't fair to the witness if the testimony is in writing.

Mr. GRIGSBY.—If the Court please, in this Oregon case I presume the statute requires the witness to sign the statement. It isn't his statement until he signs it. This statement which the law provides must be written and signed [92] by the witness isn't his statement until he does so and he isn't bound by it. (Argument.) It is only when the statement itself is a written statement that it must be shown to the witness. There is no decision to the contrary.

(Testimony of N. B. Nelson.)

Mr. SAXTON.—If the Court please, this provision is absolutely to the contrary. (Argument.)

Mr. GRIGSBY.—That doesn't apply to oral testimony which hasn't been reduced to writing under any law. Supposing Mr. Saxton had not gone and reduced this to writing, the rule would not change. Supposing we had no such facilities here and I wanted to find out what this man said on a former trial? I certainly would have a right to ask him if he had not testified so and so. Does the fact that Mr. Saxton has his testimony subscribed alter my legal rights? (Argument.) This isn't any legal document. I want to know what he said, I want to know what his recollection is of what he said on the former trial. I have a right to do so. I have a right to test his memory. I have a right to know whether he is truthful or not.

The COURT.—I think that paper ought to be used to find out what the witness did testify to.

Mr. GRIGSBY.—I certainly object to that.

The COURT.—Overrule the objection.

To which ruling of the Court the defendants then and there excepted and an exception allowed.

Mr. SAXTON.—Was your testimony at the former trial transcribed and have you read and signed it?

The WITNESS.—I have.

Mr. SAXTON.—And you found it correct?

The WITNESS.—Yes, sir.

Q. (By Mr. GRIGSBY.) Now did you at that former trial make the following answer to the follow-

(Testimony of N. B. Nelson.)

ing question (using transcript of testimony furnished by Mr. Saxton): "Q. Who else was sitting at the table you were sitting at? A. Mr. Laird and myself, Mr. [93] Adams and that man they call the tamale man, Mr. Pierson, and I think the fellow we call "Rube" Johnson, but I am not certain about him." Did you make that answer?

Mr. SAXTON.—We ask that this writing be exhibited to the witness.

The COURT.—Show it to him, Mr. Grigsby.

Mr. GRIGSBY.—We object to such procedure.

The COURT.—Overruled.

To which duling of the court defendants excepted and an exception was allowed.

(Mr. Grigsby shows transcript to witness.)

Q. Did you make that answer? A. I did.

Q. Mr. Nelson, was Nick Skorlich sitting at the stud poker table at the time of the arrest?

A. No, sir.

Q. You are positive about that? A. I am.

Q. Did you on the former trial of this case testify as follows, referring to the "stud poker table": "Q. Was Nick Skorlich at that table? A. I could not positively state, I am not sure. I think he was." Did you so answer, did you so state? Can you answer that without looking at this paper?

A. I can.

Mr. SAXTON.—I object unless the paper is shown to the witness and he can see what his answer was and what the question was.

The COURT.—Show him the paper, Mr. Grigsby.

(Testimony of N. B. Nelson.)

To which ruling of the Court the defendants excepted and an exception was allowed.

Q. (Mr. GRIGSBY, Continuing.) Did you so answer? A. Yes, sir. [94]

WITNESS.—(Continuing.) I referred to the "stud poker" table.

Q. And you swore a minute ago he was not?

A. I don't think he was.

WITNESS.—(Continuing.) I don't know what has happened to change my recollection of it since the former trial. No, I am not intoxicated now. No, I was not intoxicated at the former trial. Yes, the only arrangement I made with reference to this detective work was with Marshal Jordan. I first met Mr. Holland shortly after he came back. I did not at that time have a talk with him. I asked him if he knew about the arrangement the marshal made and he said yes, and I said, "Any time I can I will make a report." I did not talk about any particular place to go to. I did not talk to the marshal about any particular place to go to. The first place I went after I made this arrangement was Yorkey's cigar-store. I could not say how long I stayed there. I don't remember what I did there or whether I played cards or bought tobacco. I did go to Yorkey's cigar-store to see if there was any gambling, more than once. I was there pretty near every night I was at Mr. Johnson's. I went to no other places. I didn't go to Barney Gibney's. I know Barney Gibney. I was not around his place a great deal. I worked for him at one time. I do not hang around there. I

(Testimony of N. B. Nelson.)

wasn't in Barney Gibney's for nine months prior to this. Yes, sir, I was in there the other day before the trial of this case.

Q. That is the only place in town you dare to go in, isn't it?

Mr. SAXTON.—Object to that.

The COURT.—Strike it out.

To which ruling of the Court the defendants excepted and an exception allowed.

Q. Did you ever gamble in Barney Gibney's?

Mr. SAXTON.—Object to that as immaterial. [95]

The COURT.—Strike it out.

To which ruling of the Court the defendants excepted and an exception allowed.

WITNESS.—(Continuing.) I didn't know there was any gambling joint in the Realty Building after I was employed by the marshal. I did not go there. The only places I went to were Yorkey's and Ed. Johnson's. I went to both of those places for five or six nights to see if there was any gambling. These chips were worth a dollar a stack, yes, sir. There were twenty white ones in a stack. The red ones were worth twenty-five cents and the white ones five cents. I could not say whether there were any more values that night or not. That is the same value they always had every other night that I was there. It was not the same game every night. There was a better game this night of the arrest than there had been other nights. There wasn't any more money in sight; the values were the same, the white ones five cents and the red ones twenty-five cents.

(Testimony of N. B. Nelson.)

I did not state before the grand jury that the reason I reported this to the marshal's office was because I did not like the game, nor because they used marked cards, nor because they did not give me a chance and played against me. I did not state any of those things. There were no such things existed that I know of. As far as I knew the game was square. I had no complaint on the score. No, I did not so state before the grand jury, in my cabin when the grand jury visited me. I got five dollars a day. I got ten dollars in advance. I could not say whether or not I used that ten dollars to play poker with; I could not say if I didn't. I had some of my own money in my pocket; I am not sure. Yes, sir, that ten dollars with my own money lasted me five or six nights. Yes, the only reason I tell this jury that I waited until the 5th of January to report this was because during that whole week there never was a game that I did not fear would break up if I left it to tell the marshal. That is the only reason. I don't know who [96] appeared for me as attorney at the preliminary hearing. I was present at the preliminary hearing with the other defendants. Yes, sir, I have been in your office once, only once, Mr. Mason brought me up there one night, a night or two before the grand jury sat in April. I don't remember whether I talked with you in company with Mr. Hanson on the street before that also. Yes, sir, you were at my cabin and I talked with you there. No, I did not know you appeared for me as my attorney at the preliminary hearing. Nobody ever

(Testimony of N. B. Nelson.)

told me you appeared for me. Yes, sir, I heard you enter your appearance for all the defendants; yes, sir, I was there. No, sir, I didn't dispute that, and I never told you I was not your client.

Redirect Examination by Mr. SAXTON.

I never employed Mr. Grigsby as my counsel. I didn't employ him at the preliminary hearing.

(Witness excused.)

Testimony of J. H. Young, for the Government.

And thereupon J. H. YOUNG was called as a witness for the plaintiff and being duly sworn testified as follows:

Direct Examination by Mr. SAXTON.

My name is J. H. Young. I am employed by G. P. Goggin in the grocery business. I know the defendant, Adelbert Gumaer. Have known him since some time last summer. I had a conversation with him shortly after he was arrested in this gambling case concerning gambling. He admitted to me he had been gambling in a small way.

Cross-examination by Mr. GRIGSBY.

No he did not tell me he had been gambling on this particular night he was arrested. He denied it at first and later on admitted it; admitted that he was gambling on that particular night, yes, sir. I was not talking to him about this for the purpose [97] of getting him to admit it. I was not lecturing him on the subject of gambling. He owed me some money and I was trying to collect some money from him. I asked him first what sort of

(Testimony of J. H. Young.)

trouble he got into and he denied it. I did try to get him to go to the District Attorney so that he could get out of the trouble and I could give him credit again and he might get a chance to pay what he owed, that was my motive. I didn't make a statement to him that they were going to get those fellows and that if he didn't go up to the District Attorney's office and turn state's evidence I would shut off his credit. I made that statement in a different way and not as you put it. I said the best way for him to do was to square himself up and get out of this trouble but made no reference to any body. His credit had been shut off prior to that time. I told him to get his account squared up and pay his bills and I will give you credit so you can continue in business. I said in effect, "If you go to the District Attorney and confess and get out of this trouble I will give you credit so you can open up again and make money to square yourself with." My interest in the matter was merely to collect the bill he owes Mr. Goggin. I did not go to his room in the Elite Bath House and try to get him to go to the District Attorney. I went up to Mr. Johnson's place to try and collect the bill. He promised me money on the bill but he did not show up as he agreed. He claimed he had money coming from the soldiers at the Fort. Yes, sir, I was summoned as a juror in this case.

Q. When did you tell Mr. Saxon what you have testified to to-day?

(Testimony of J. H. Young.)

WITNESS.—(Continuing.) I never went to Mr. Saxton about anything of the kind. He came to me about it several days ago. I did not talk to Mr. Saxton after the preliminary hearing. I never talked with the District Attorney or the marshal. I might have made some mention of it recently to his [98] deputies; that was the only thing. Probably within a week. I asked Mr. Holland one morning if there was any report on the fellows who were missing. I do not remember talking about this fellow Gumaer, but I wouldn't swear. I have no recollection of it. I have not talked about this man Gumaer with the District Attorney prior to the time I went on the stand to-day that I know of. I didn't talk to him about it yesterday. I do not remember having been to his office talking about it. Never talked with him on the street about it. He came to the store, that is the only time I recollect. That was some time about a week ago, I believe. I told him there what I testified to to-day. He reported to me that it came to him from some other source that I had some dealings with Mr. Gumaer. I don't know what that source was.

Q. Don't you know that one of the deputies informed Mr. Saxton to that effect?

Mr. SAXTON.—Objected to as incompetent and immaterial and not cross-examination.

The COURT.—Sustain the objection.

To which ruling of the Court the defendants excepted and an exception allowed.

(Testimony of J. H. Young.)

WITNESS.—(Continuing.) I do not recollect that after the preliminary examination when I heard that Mr. Gumaer was arrested that I had a talk with Mr. Saxton or any of the deputy marshals or the marshal about fixing the case up so that Gumaer could get out of it if he would turn state's evidence. I did not meet Mr. Gumaer on the street and state to him that I wanted him to go up to the District Attorney and make a clean breast of it, and that I had gotten it all fixed up so that he could get out of it, nothing of that kind. A couple of days after this arrest I heard that he had been arrested and given a fictitious name, and I found out he was the man and I went to him and he denied [99] it and I stated to him at that time, "The best thing for you is to make a clean breast of the thing and square yourself." I never made a statement to the effect that if he did not go I would see he went over the road with the rest of them.

(Witness excused.)

Testimony of N. B. Nelson, for the Government (Recalled—Cross-examination).

Thereupon N. B. NELSON was recalled by defendants for further cross-examination and testified as follows:

Q. (By Mr. GRIGSBY.) Do you know Chas. Mason, one of the men who was arrested with you?

A. Yes, sir.

Q. Did you go to the building where the Arctic Billiard Parlor is, along in March of this year and go to Mr. Mason and wake him up in the night to

(Testimony of N. B. Nelson.)

propose to him that he should stand guard while you robbed the Bourbon Creek dredge by cleaning up the plates of the amalgum that was left?

Mr. SAXTON.—We object to that question as incompetent and immaterial.

The COURT.—Sustain the objection.

To which ruling of the Court the defendants excepted and an exception allowed.

Q. Did you make the same proposition to Frank Martin?

Mr. SAXTON.—Same objection.

The COURT.—Sustained.

To which ruling of the Court the defendants excepted and an exception allowed.

Q. And did you state to each of these gentlemen while you were making that proposition that you had stolen three hundred and eighty dollars from the Plein Dredge?

Mr. SAXTON.—Objected to as incompetent and immaterial.

The COURT.—Sustained.

To which ruling of the Court the defendants excepted and an exception allowed.

Q. (By Mr. SAXTON.) What was your purpose or object in going down to the billiard-parlors, [100] the Arctic, and getting into these games?

A. To locate gambling, if there was any, and to report it, under my instructions, to the marshal.

(Witness excused.)

Testimony of Chas. Mason, for the Government.

And thereupon CHAS. MASON, a witness called for and on behalf of the plaintiff, being duly sworn, testified as follows:

Direct Examination by Mr. SAXTON.

My name is Charles Mason. I reside in Nome. I have lived here since 1901. I was one of the parties that was arrested at the time the defendants were arrested in this case. I refuse to answer the question whether I was present in the Arctic Billiard Parlors at the time the defendants were arrested on the ground that it might tend to criminate me. I refuse on the same ground to state to the jury whether or not at the time these defendants were arrested in the Arctic Billiard Parlors I was with Ed Johnson and others engaged in a game of "pan-gingui" being played for chips of money value. I do not know whether or not at that time Mr. Laird, Mr. Skorlich, Mr. Gumaer, Mr. Nelson and Elmer Adams at the same place at another table in that room were engaged in a game of "stud poker" being played with cards and checks of value. I admitted to you I was arrested there.

(Witness excused.) [101]

AND, THEREUPON, Mr. Saxton, U. S. District Attorney, offered in evidence a certain stipulation to which counsel for defendants objected on the ground that the same was immaterial, first waiving any constitutional right that defendants might have as to the right of the defendants to be confronted with witnesses against them, which objection being

overruled, the defendants excepted and an exception was allowed.

AND THEREUPON the said stipulation was offered and received in evidence and marked Plaintiff's Exhibit "H," as follows:

Plaintiff's Exhibit "H"—Stipulation Re Witnesses A. Hanson and Elmer Adams.

In the District Court for the District of Alaska, Second Division.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

ED JOHNSON, A. C. LAIRD, FRANK KOIBETITZ, JOHN NOVOSEL, NICK SKORLICH, ALFRED PIERSON, ADELBERT G. GUMAER,

Defendants.

Stipulation.

It is hereby stipulated and agreed by and between the parties hereto through their respective attorneys as follows:

1. That after diligent effort the United States is not able to produce, at the trial of this cause, the following witnesses, to wit: A. Hanson and Elmer Adams.

2. That each of said witnesses, if produced as a witness on the trial of this cause, would refuse to testify to any of the material facts in this cause upon the ground that such evidence would tend to incriminate himself.

3. That this stipulation may be considered in evidence [102] and read to the jury upon the trial of this cause.

F. M. SAXTON,
United States Attorney.
G. B. GRIGSBY,
HUGH O'NEILL,
Attorneys for Defendants.

[Endorsed]: 1036—C. The District Court, District of Alaska, Second Division. The United States vs. Ed Johnson et al. Stipulation. Filed in the office of the Clerk of the District Court of Alaska, Second Division, at Nome, Apr. 26, 1916. G. A. Adams, Clerk.

AND THEREUPON THE GOVERNMENT RESTED.

Testimony of Charles Mason, for Defendants.

And thereupon CHARLES MASON, a witness called on behalf of the defendants, and the following proceedings were had:

Mr. GRIGSBY.—We offer to prove the state of facts propounded in my question to Mr. Nelson when he was last on the stand.

Mr. SAXTON.—Objected to as incompetent and immaterial.

The COURT.—Sustain the objection.

To which ruling of the Court the defendants excepted and an exception was allowed. [103]

Testimony of Frank Martin, for Defendants.

Thereupon FRANK MARTIN, a witness produced for and on behalf of the defendants, being duly sworn, testified as follows:

Direct Examination by Mr. GRIGSBY.

My name is Frank Martin.

Mr. GRIGSBY.—We offer to prove the state of facts indicated by my qusetion to the witness Nelson when he was last on the stand with reference to the same proposition, by this witness.

Mr. SAXTON.—Objected to as incompetent and immaterial.

The COURT.—Objection sustained.

To which ruling of the Court the defendants excepted and an exception was duly allowed.

Testimony of Merrill Beatty, for Defendants.

And thereupon MERRILL BEATTY was called as a witness on behalf of the defendants, and being duly sworn, testified as follows:

Direct Examination by Mr. GRIGSBY.

My name is Merrill Beatty. I am a bartender. I was working at the Nevada in the month of March and the latter part of February. I know N. B. Nelson, the witness who was on the stand a few minutes ago. I had a conversation with Mr. Nelson along the latter part of February or the first part of March in the Nevada Saloon along somewhere near the middle of the day.

Q. I will ask you to state whether or not in that conversation between you and him in the presence

(Testimony of Merrill Beatty.)

of Ed Young, the proprietor of the Nevada, and Nick Barge, and other persons being present, he stated to you that he had acted as a stool pigeon before? A. He did.

Q. And got paid for it? A. Yes, sir. [104]

Mr. SAXTON.—I move to strike out the answer of the witness and object to the question for the reason it is entirely immaterial.

The COURT.—Motion granted and objection sustained.

To which ruling of the Court the defendants excepted and an exception was allowed.

Mr. GRIGSBY.—We offer to prove the same conversation by Ed Young and Nick Barge.

Mr. SAXTON.—Same objection.

The COURT.—Objection sustained.

To which ruling of the Court the defendants excepted and an exception was allowed.

And thereupon the following proceedings occurred:

Mr. GRIGSBY.—Defendants move that the Court direct the jury to return a verdict of not guilty as to each of the defendants of the crime charged in the indictment, and both of them, for the reason there is no evidence of any gambling for money except that of the witness N. B. Nelson, who is a self-confessed accomplice, the statute of Alaska providing that a conviction cannot be had upon the uncorroborated testimony of an accomplice.

The COURT.—Motion overruled.

To which ruling of the Court the defendants ex-

(Testimony of Merrill Beatty.)

cepted and an exception was allowed.

Whereupon Mr. Grigsby offered in evidence the transcript of the proceedings of the United States Commissioner's Court of this precinct and division in the case of Ed Johnson, A. C. Laird and others, for the purpose of showing that the defendants, and each of them, have already been tried for the precise offense charged in the indictment.

Mr. SAXTON.—Object to the offer as incompetent, [105] irrelevant and immaterial.

The COURT.—Objection sustained.

To which ruling of the Court the defendants excepted and an exception was allowed.

The transcript referred to was thereupon marked Defendants' Exhibit 1 for identification and was as follows:

Defendants' Exhibit 1—Information in U. S. A. vs. Johnson in Commissioner's Court.

In the Commissioner's Court for the Precinct of Cape Nome, District of Alaska, Second Division.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

ED JOHNSON, A. C. LAIRD, FRANK KOIBETITZ, JOHN NOVOSEL, NICK SKORLICH, CHAS. MASON, A. HANSON, N. B. NELSON,

Defendants.

Violation of Sec. 2032, Compiled Laws of Alaska—
GAMBLING.

United States of America,
District of Alaska,—ss.

Phil Holland, being first duly sworn, on his oath makes complaint and accuses Ed Johnson, A. C. Laird, Frank Koibetitz, John Novosel, Nick Shorlich, Chas. Mason, Alfred Pierson, B. Garnard, A. Hanson and N. B. Nelson of the crime of gambling, committed as follows: The said Ed. Johnson, A. C. Laird, Frank Koibetitz, [106] John Novosel, Nick Skorlich, Chas. Mason, Alfred Pierson, B. Garnard, A. Hanson and N. B. Nelson, on the 5th day of January, 1916, in the municipality of Nome, and District of Alaska, did wrongfully and unlawfully deal, play, carry on, open, cause to be opened, and conduct a certain game called "Stud Poker," which said game was then and there a game played with cards for money, checks and chips as representatives of value, contrary to the form of the statutes in such cases made and provided, and against the peace and dignity of the United States.

SECOND COUNT.

And the said Phil Holland presents this further information, and complaining of the above-named defendants accuses them of the crime of gambling, committed as follows:

That said defendants Ed Johnson, A. C. Laird, Frank Koibetitz, John Novosel, Nick Skorlich, Chas. Mason, Alfred Pierson, B. Garnard, A. Hanson and N. B. Nelson, on the 5th day of January, 1916, in the municipality of Nome and District of Alaska, did

wrongfully and unlawfully deal, play, carry on, open, cause to be opened, and conduct a certain game called "Pangingi," which said game was then and there a game played with cards for money, checks and chips as representatives of value contrary to the form of the statutes in such cases made and provided, and against the peace and dignity of the United States.

PHIL HOLLAND.

Subscribed and sworn to before me this 7th day of January, 1916.

[Seal] JAMES FRAWLEY,
Commissioner and ex-officio Justice of the Peace.

The foregoing information is hereby approved this 7th day of January, 1916.

F. M. SAXTON,
United States Attorney. [107]

[Endorsed]: No. 1610. Commissioner's Court, Cape Nome Precinct, District of Alaska, Second Division. The United States vs. Ed Johnson et al. Information. Filed this 7th day of Jan., 1916. James Frawley, U. S. Commissioner, Justice of the Peace, Nome Precinct, Alaska.

Warrant of Arrest.

In the United States Commissioner's Court for the Precinct of Cape Nome, District of Alaska, Second Division.

United States of America,
District of Alaska,
Precinct of Cape Nome,—ss.

In the Name of the United States of America, to the

United States Marshal of the District of Alaska, Second Division, or Any Deputy: GREETING:

Information upon oath having been this day laid before me that the crime of Gambling has been committed and accusing Ed Johnson, A. C. Laird, Nick Skorlich, Frank Koibetitz, John Novosel, Chas. Mason, N. B. Nelson, A. Hansen, Alfred Pierson, and B. Garnard thereof,

YOU ARE THEREFORE HEREBY COMMANDED forthwith to arrest the above-named ten persons and bring them before me at the United States Commissioner's courtroom in the city of Nome, precinct of Cape Nome, District of Alaska, or, in case of my absence or inability to act, before the nearest and most accessible magistrate, to answer said complaint and be further dealt with as the law directs.

HEREOF FAIL NOT and make return of this warrant with your doings thereon.

Dated at Nome, Alaska, this 7th day of Jan., 1916.

JAMES FRAWLEY,

Commissioner and Ex-officio Justice of the Peace.

[108]

RETURN.

Received this Warrant on the 7th day of January, 1916, at Nome, and executed the same by arresting the within named Defendants at Nome, the 7th day of January, 1916, and have their bodies now in court, as within I am commanded.

Dated at Nome, Alaska, January 7, 1916.

E. R. JORDAN,
U. S. Marshal.
By Phil Holland,
Deputy.

Marshal's Costs:

10 Services $40.00
1 Attendance 6.00

[Endorsed]: No. 1610. Commissioner's Court, Precinct of Cape Nome, Second Division, District of Alaska. United States of America vs. Ed Johnson. Warrant. Returned and Filed Jan. 10, 1916. James Frawley, Commissioner.

Docket of United States Commissioner.

#1610.

THE UNITED STATES OF AMERICA

vs.

ED JOHNSON, A. C. LAIRD, NICK SKORLICH, FRANK KOIBETITZ, JOHN NOVOSEL, CHAS. MASON, N. B NELSON, A. HANSEN, ALFRED PIERSON and B. GARNARD,

Defendants.

F. M. SAXTON, U. S. Attorney, for United States.

GEORGE B. GRIGSBY, for Defendants.

Complaint made by Phil Holland.

Offense charged vio. sec. 2032—Crim. Code, Alaska—Gambling.

Offense committed at Nome on the 5th day of January, 1916.

Place of arrest, Nome.

Disposition of case, Held to answer.

Date.	Proceedings.
Jan. 5, 1916.	At 11 P. M. the above-named defendants were brought before me by U. S. Deputy Marshals A. B. Miller, Phil Holland, Joel Terrell and Jailor W. H. Jordan on the alleged crime of Gambling. Geo. B. Grigsby appearing [109] for and representing said defendants, requested that the bail bond of defendants for their appearance to plea to said charge be fixed and thereupon the Court fixed the appearance bond of said defendants as follows: Ed Johnson, A. C. Laird, Nick Skorlich, Frank Koibetitz and John Novosel at $200 each and Chas. Mason, N. B. Nelson, A. Hanson, Alfred Pierson and B. Garnard at $50 each.
Jan. 5, 1916.	N. B. Nelson furnished a cash bond for himself and Chas. Mason in the sum of $100, and they were both ordered released from custody, a discharge card being given to the Marshal.
Jan. 5, 1916.	A check of Russ Downing's for $250 which was received as cash was fur-

nished as bail for Ed. Johnson and Alfred Pierson, and they were ordered discharged from custody.

$900 cash was deposited with me by Geo. B. Grigsby as appearance bond for the other six defendants, as follows: $200 for A. C. Laird; $200 for Nick Skorlich; $200 for Frank Koibetitz; $200 for John Novosel; $50 for A. Hansen; and $50 for B. Garnard; and thereupon said defendants were ordered released from custody.

Jan. 6, 1916. Written undertaking was filed for Ed. Johnson in lieu of cash bail.

Jan. 6, 1916. Written undertaking was filed for A. C. Laird in lieu of cash bail.

Jan. 6, 1916. Written undertaking was filed for John Novosel in lieu of cash bail.

Jan. 6, 1916. Written undertaking was filed for Nick Skorlich in lieu of cash bail.

Jan. 6, 1916. Written undertaking was filed for Frank Koibetitz in lieu of cash bail. [110]

Jan. 6, 1916. Written undertaking was filed for A. Hanson in lieu of cash bail.

Jan. 6, 1916. Written undertaking was filed for Alfred Pierson in lieu of cash bail.

Jan. 6, 1916. Written undertaking was filed for B. Garnard in lieu of cash bail.

Jan. 7, 1916. At the hour of 2 P. M., this day, that being the hour for which said hear-

ing was set, the defendants all appeared as their names were called, and Geo. B. Grigsby appeared as attorney for all of said defendants and demanded a jury trial. He contended that this cause was one in which the offense charged, being Gambling, was to be tried and determined by the U. S. Commissioner, as Ex-officio Justice of the Peace and that the Court had no jurisdiction to sit as a U. S. Commissioner and take testimony so as to bind said defendants over to the Grand Jury or to hold them to answer to the District Court in event the evidence produced would tend to show their probable guilt. F. M. Saxton representing the Government resisted the application made by Mr. Grigsby. Hereupon Court adjourned and said cause was continued until Jan. 8, 1916, at 2 P. M.

Jan. 8, 1916. At 2 P. M. this day the parties all appearing and the defendants' atty. Geo. B. Grigsby, argued his application for a jury trial, and F. M. Saxton argued the resistance of said application. Upon the conclusion of said argument the Court denied the application for a trial

by jury, holding that the Court was under the information filed in this case, sitting in the capacity of a U. S. Commissioner as committing magistrate and not as Ex-officio Justice of the Peace with jurisdiction and power to try and determine the case. [111]

Jan. 8, 1916. The following proceedings now took place. The Court proceeded to inform the defendants of their statutory or legal rights, when their attorney for them waived all legal formalities in this respect and announced that they, the defendants, were ready to hear the testimony to be produced by the Government. Whereupon Deputy Marshals Phil Holland and A. B. Miller were sworn and testified in behalf of the Government. At the conclusion of their testimony and during the course of the same, the Government introduced into evidence cards and chips used at the table where they alleged "Pangingui" was being played, which was marked as Government "Ex. 1"; also chips and cards from the table where they alleged Stud Poker was being played as Government Ex. 2; also the two tables at which it was

alleged the defendants were playing when arrested as Government "Ex. 3"; also 4 cardboard boxes with playing cards contained therein and wooden box with a miscellaneous lot of chips as Government's "Ex. 4." Whereupon the Government rested its case. Geo. B. Grigsby moved that the defendants be discharged, the evidence produced being insufficient to hold the defendants to answer. This motion was overruled by the Court and the defendants' attorney then stated that they did not wish to produce or introduce any evidence and rested their case. Whereupon the Court took an adjournment and this case was continued until Jan. 10, 1916, at 3 P. M.

Jan. 10, 1916. At 3 P. M. this day the defendants, and each of them, appeared with their attorney Geo. B. Grigsby, and F. M. Saxton appeared for the Government. Said case being called, F. M. Saxton moved that the case against [112] Chas. Mason, A. Hanson and N. B. Nelson be dismissed and their bonds released, which motion was granted and said three defendants were discharged. Geo. B. Grigsby renewed his mo-

tion or application for a jury trial, which motion or application was overruled.

All the testimony having been submitted to the Court and the Court finds therefrom that there is sufficient cause to believe that the defendants Ed. Johnson, A. C. Laird, Nick Skorlich, Frank Koibetitz, John Novosel, Alfred Pierson and B. Garnard are guilty of the offense charged. Now therefore it appearing to me from the testimony produced before me on the examination that the crime of Gambling has been committed and that there is sufficient cause to believe E. Johnson, A. C. Laird, Nick Skorlich, Frank Koibetitz, John Novosel, Alfred Pierson and B. Garnard are guilty thereof, therefore I order each of them to be held to answer the same and I place their bail or appearance bond at $250 each and said defendants are remanded to the custody of the U. S. Marshal until said bond is furnished or they are otherwise legally discharged therefrom.

Dated: Nome, Alaska, Jan. 10, 1916.

JAMES FRAWLEY,
U. S. Commissioner.

Jan. 10, 1916. Ed. Johnson filed his written bond with G. A. Hall and Fred Daniels, sureties.

Jan. 10, 1916. A. G. Laird filed his written bond with G. A. Hall and Henry Burgh, sureties.

Jan. 10, 1916. Nick Korlich filed his written bond with Milo Sladovich and Albert Nicholson, sureties.

Jan. 10, 1916. Frank Koibetitz filed his written bond with F. J. Krieck and Con Seibel, sureties. **[113]**

Jan. 10, 1916. John Novosel filed his written bond with Milo Sladovich and Henry Burg, sureties.

Alfred Pierson filed his written bond with Albert Nicholson and A. G. Oliver, sureties.

B. Garnard filed his written bond with F. J. Krick and A. G. Oliver, sureties.

Commissioner's costs, $36.

Territory of Alaska,
Cape Nome Precinct,—ss.

I, James Frawley, United States Commissioner and Ex-officio Justice of the Peace in and for the Precinct aforesaid, DO HEREBY CERTIFY that the foregoing is a true and complete transcript of the proceedings had before me upon the examination of Ed. Johnson, A. C. Laird, Nick Skorlich, Frank Koibetitz, John Novosel, Charles Mason, N. B. Nelson, A. Hanson, Alfred Pearson and B. Gernard, charged

with the crime of gambling, and that annexed hereto are the original Warrant, Information and Undertaking on Bail in said action and also sent herewith to the Clerk of the District Court the exhibits introduced therein as follows: Exhibit "I" Cards and Chips used at table where it was alleged "Pangengi" was being played; Exhibit "2," Chips and Cards from table where it was alleged Stud Poker was being played; Exhibit "3" Tables (2) at which it was alleged defendants were playing when arrested; Exhibit "4," four cardboard boxes with playing cards contained therein and a wooden box with a miscellaneous lot of chips.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal this 10th day of January, A. D. 1916.

[Seal] JAMES FRAWLEY,
United States Commissioner and Ex-officio Justice of the Peace. [114]

Mr. GRIGSBY.—I now offer to prove by Mr. Saxton, the District Attorney, the proceedings which took place at the preliminary hearing and to show by him that the defendants have already had a trial for the precise crimes charged in the indictment, the witness Saxton being present in court.

Mr. SAXTON.—Same objection.

The COURT.—Objection sustained.

To which ruling of the Court the defendants excepted and an exception allowed.

Testimony of John Nestor, for Defendants.

And thereupon JOHN NESTOR, a witness produced for and on behalf of the defendants, being duly sworn, testified as follows:

Direct Examination by Mr. GRIGSBY.

My name is John Nestor. I was a member of the last grand jury in this division, the one that brought in the indictment against the defendants in this case. I remember the gambling case that was being investigated by the grand jury. The grand jury had occasion, in order to get the testimony of N. B. Nelson, to go to his cabin in order to examine him. I was present at that examination and heard his testimony. I do not recollect the substance of it. To the best of my recollection he stated that his reason for reporting the gambling at the Winsor or Arctic Billiard Hall to the marshal's office was that he did not like the game, that he wasn't getting a square deal or words in substance to that effect. I don't remember just exactly the words.

Cross-examination by Mr. SAXTON.

I recollect that Mr. Nelson made a statement with reference to a game in which the defendant Johnson took a card from one of the players, but as to whether he stated he [115] was in the game himself or not, I don't remember. My recollection is that he stated he was in the game. I know it was some cards he was talking about, and I think he said he saw cards coming from somewhere else. To the best of my recollection he was at the table, but whether he was in the

(Testimony of John Nestor.)

game or not I would not say. That is all that I recollect he stated about any unfair game was just that one circumstance.

Redirect Examination by Mr. GRIGSBY.

Q. But he did give that as his reason for reporting the game?

WITNESS.—(Continuing.) I think the question was asked him, I am not sure. I think the District Attorney asked him and I think that is what he gave as his reason, he could not see how he could win or something like that. I don't remember the exact words. I don't recollect now whether he had been asked several questions before he admitted he had been hired to go down there. I think his testimony was that he complained to the marshal about it. Maybe not, I don't know. I would not want to say as to that. There was some talk upon that line, but I don't remember whether that was it or not.

Q. Isn't it a fact that when he was first examined he said there was something about the game he did not like and for that reason he complained, and didn't Mr. Saxton then take him in hand and say, "You were hired by the marshal to go down there?"

Mr. SAXTON.—Object to that. It is entirely immaterial. This is an impeaching witness.

The COURT.—Sustain the objection.

To which ruling of the Court the defendants excepted and an exception allowed. [116]

Recross-examination by Mr. SAXTON.

I don't remember for certain what he said. I know he mentioned about getting money, that the

(Testimony of John Nestor.)

marshal paid him money, that is the impression I had. Whether it was his own money or the marshal owed him, I don't remember. I don't remember what he said about that.

(Witness excused.)

Whereupon court was adjourned until Saturday morning, at 10 o'clock, April 29th, 1916.

And thereupon, upon convening of court Saturday morning at 10 o'clock, April 29th, 1916, the following proceedings were had:

Testimony of Perry Moore, for Defendants.

PERRY MOORE, a witness produced for and on behalf of the defendants, being duly sworn, testified as follows:

Direct Examination by Mr. GRIGSBY.

My name is Perry Moore. I worked for Henry Burgh at his saloon last winter along shortly before Christmas. I know Phil Holland, a deputy marshal. I heard a conversation in Henry Burgh's saloon, the Eagle, along shortly before the holidays between Phil Holland and Ed Johnson, in the presence of myself, in which Phil Holland stated to the defendant Johnson, "I am going after you and I am going to get you." Those are practically the words he used.

Cross-examination by Mr. SAXTON.

I stated I heard those words used, or practically those words. I would not be positive about the exact words, but in sum and substance that is what he said. I was probably twenty inches from them, very close. I didn't hear anything mentioned by Mr. Holland

(Testimony of Perry Moore.)

about his getting his tools or anything to that effect. I didn't understand it [117] that way, no, sir.

(Witness excused.)

The foregoing is all of the testimony which was given and admitted on the trial of said cause.

DEFENDANTS REST.

GOVERNMENT RESTS.

Whereupon the case was argued to the jury by F. M. Saxton on behalf of the plaintiff, and by George B. Grigsby and Hugh O'Neill on behalf of the defendants, and during the argument of said F. M. Saxton the following proceedings were had:

In making his closing argument to the jury F. M. Saxton said:

"Gentlemen of the Jury, the witness Chas. Mason, one of the men who was arrested together with the defendants in this case, has been sworn as a witness in this cause and when asked with reference to what was going on in the Arctic Billiard Parlor at the time of the arrest, in his presence, refused to answer on the ground that said answer might tend to criminate him. Gentlemen of the Jury, what was going on there at that time that he was unwilling to tell about for fear it might incriminate him? You know perfectly well what was going on. There was a crime being committed there, and you know perfectly well what crime it was."

Whereupon George B. Grigsby excepted to the remarks as being prejudicial to the defendants and asked the Court to instruct the jury that such comment was improper and so disregard the same, which

the Court then and there refused to do, to which ruling the defendants excepted and an exception was allowed.

And thereupon the argument being concluded the Court charged the jury in writing as follows: [118]

In the District Court for the District of Alaska, Second Division.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ED. JOHNSON, A. C. LAIRD, FRANK KOIBETITZ, JOHN NOVOSEL, NICK SKORLICH, ALFRED PIERSON, ADELBERT C. GUMAER,

Defendants.

Court's Instructions to the Jury.

GENTLEMEN OF THE JURY:

The defendants are charged by the first count of the indictment in this case with dealing, playing, carrying on, opening, causing to be opened and conducting a game called "stud poker," and by the second count of said indictment in this case with dealing, playing, carrying on, opening, causing to be opened and conducting a game called "Pangingi."

Section 2032 of the Compiled Laws of Alaska is the one under which this case is prosecuted. Each and every person who shall deal, play, carry on, or cause to be carried on, or conduct, either as owner, proprietor, or employee, whether for hire or not, any game played with cards, dice, or any other device,

whether the same shall be played for money, checks, credit, or any other representative of value, shall be guilty of a misdemeanor.

To this indictment the defendants have entered a plea of not guilty and you are instructed that such plea puts the burden of proof upon the prosecution to establish every essential allegation of the indictment beyond reasonable doubt. [119]

2.

There are seven defendants in this case and it becomes your duty to consider each one of them separately in relation to the crime charged under the evidence and instructions in this case. All or any number of them may be innocent or all or any number of them may be guilty on one or both of the counts charged. That is for you to determine from the evidence under these instructions. And in determining the guilt or innocence of any one of these defendants, you should consider the evidence and these instructions in their relation to such defendant as if such defendant were the only defendant in the case. Hence when I have used the word "defendant" in these instructions you will understand that the same is used to represent each of the defendants when his guilt or innocence is under consideration by you.

3.

The essential elements of the crime of gambling are:

1st. That the game was played with cards, dice or other device;

2d. That such game was played for money, checks, chips, credit, or other representative of value;

3d. That the defendant was connected with such game as a dealer, player, owner, proprietor, or employee or lessee of the room in which such game was conducted;

4th. That said game was played in the Second Division of Alaska within three years prior to the date of filing the indictment in the case;

5th. That if defendant was not connected with such game as dealer, player, owner, proprietor or employee, but was the owner or lessee of the room in which the game was played, then that defendant knew that gambling was being conducted in said room. [120]

4.

In a criminal cause the Judge and jury of this court have important though separate functions to perform. It is your duty to hear all of the evidence and to decide thereupon all questions of fact. Sometime it is attempted to introduce testimony which for legal reasons the Court refuses to permit. You will not consider any such matter or any knowledge or information known to you concerning the case and not derived from evidence given upon the witness-stand in arriving at your verdict. It is the duty of the Judge of this court to instruct you upon the law applicable to the case and the statute makes it your duty to accept as law what is laid down by the Court as such in these instructions, and if you should knowingly refuse to do so you would be liable as for contempt of court.

5.

Each of the defendants in this case is presumed to

be innocent until he is proven guilty. If upon such proof there be reasonable doubt remaining, the accused is entitled to the benefit of it by an acquittal. A reasonable doubt is such a doubt as exists in the mind of a reasonable man after a full, free, and careful examination and comparison of all the evidence. It must be such a doubt as would cause a careful, considerate and prudent man to pause and consider before acting in the careful and most important affairs of life. A certainty that convinces and directs the understanding and satisfies a reasonable judgment would be proof beyond a reasonable doubt. If you believe as reasonable men you should not disbelieve as jurors. [121]

This does not mean that every element of the crime charged must be proven by direct and positive evidence. Facts may be proven by indirect or circumstantial evidence, or may be a presumption arising from the facts proven. If you are satisfied beyond a reasonable doubt that your conclusion is correct that is sufficient whether based upon direct proof, indirect or circumstantial proof, or from a presumption arising from other facts proven.

5½.

I instruct you that the testimony of one witness, if believed by you, is sufficient to establish any material fact in the case unless such witness is an accomplice. If you believe from the evidence that the witness N. B. Nelson was employed by the United States Marshal for this division to engage in the apprehension of persons violating the law by gambling, and that in pursuance of said employment the said Nel-

son engaged in a gambling game, if any, with the defendants, then I instruct you that said Nelson is not an accomplice with the defendants, and you should give his testimony the same weight and consideration as you would have done if he had been present and had testified to the same matters without participating in the game.

On the other hand if you believe from the evidence that the said witness N. B. Nelson was not employed by the United States Marshal or that he did not engage in the gambling game, if any, with the defendants for the purpose of apprehending them, then I instruct you that he was an accomplice and his testimony connecting the defendants with the game, if any, must be corroborated by some other evidence which tends to connect the defendants with the game. However, his testimony as to the character and elements of the [122] game need not be corroborated even though he be an accomplice. In other words the testimony of an accomplice is sufficient, if you believe it, to establish that a certain game played with cards for money, checks, chips or credits of value was being played at a certain time and place, without any corroboration whatever. But his testimony as to who was engaged in or connected with the game, if any, must be corroborated by some other evidence tending to connect the defendants with the game.

Hence, the testimony of said witness, N. B. Nelson, whether you find that he was an accomplice or not, if you believe it, is sufficient to establish the kind of a game that was being played, if any; the means

or instrumentalities used in playing such game, if any; the nature and value of the "stakes" for which such game was being played, if any. However, his testimony, if any, connecting the defendants with the game, must be corroborated as heretofore stated, in case you find him to be an accomplice, but not otherwise.

5½A.

The Government has introduced certain evidence in this case tending to show that the defendants were playing for certain chips on which the value in trade of each chip is printed. I instruct you that the printing on each of such chips is sufficient evidence to establish the value thereof, since no evidence has been introduced to explain or contradict the printing thereon. [123]

6.

You are the sole judges of the credibility of witnesses and the weight to be attached to their testimony. This power is not to be exercised arbitrarily by you, but with reasonable discretion and in subordination to the rules of evidence. You may take into consideration the interest the witness has, if any, in the result of the trial, his bias or prejudice if either appear, his mental capacity and his means for knowing that about which he testifies, the reasonableness or unreasonableness of his statements, his demeanor on the witness-stand, his candor or evasion, and then applying your knowledge of human actions and motives you will determine where the truth lies and find accordingly.

You are instructed that you are not bound to find

in conformity with the testimony of any number of witnesses which do not produce a conviction in your minds against a less number, or against a presumption or other evidence satisfying your minds.

If you believe that any witness in this case has testified falsely in one part of his testimony you are at liberty to reject all of his testimony, but you are not bound to do so. You should reject the false part and may give such weight to other parts as you think they are entitled to receive.

6.

If you should find under the foregoing instructions that any of the witnesses in this case are accomplices, then I instruct you that the testimony of an accomplice ought to be viewed with distrust. [124]

6½.

You are instructed that the oral admissions of a party are to be viewed with caution.

6½A.

Our statute provides that in the trial of a criminal case, the person accused shall at his own request, but not otherwise, be deemed a competent witness, but if the defendant or accused waives his right to testify in the case, such waiver shall not create any presumption against him.

7.

The owner or lessee of a building or room cannot lease or sublet such building or room for an unlawful purpose, or knowingly permit it to be used for an unlawful purpose without being held guilty of the commission of the unlawful act or acts transpiring in such building or room. If you should find from the

evidence in this case that one of the defendants held the room in which gambling is alleged to have been conducted under a lease from the owner, and you further find that gambling as alleged was being conducted there, then I instruct you that such owner or lessee is guilty if he knew that such gambling was being carried on there whether he had any connection with the game or not.

It follows, therefore, that if you find gambling was being carried on in the room known as the Arctic Billiard Room or Parlor, and that said room was held by defendant under a lease from the owner, either oral or written, then I instruct you that such defendant is guilty if he knew that such room was being used for the purpose of gambling, and a game of stud poker [125] or pangingi played with cards for money or chips of value was had in said room on the night in question, and the owner of said room is likewise guilty under same conditions if he knew them to exist.

Again if you find that a game of stud poker or pangingi was played with cards for money or chips of value on the night in question, in said room, and the defendant had anything to do with said game such as dealer, player, owner, proprietor or employee, then I instruct you that the defendant is guilty, and it does not matter whether he was the lessee or owner of said room and had previous knowledge of said game or not.

8.

I have permitted evidence to be introduced in this case tending to show gambling to have been carried on

in the room known as the Arctic Billiard-room at other times prior to the time alleged for the purpose of establishing the knowledge of the owner and lessee of said room that gambling was being carried on there, and you should consider it for no other purpose. As to what extent such testimony tends to show such knowledge on the part of defendant is for you to determine.

9.

There has been some testimony tending to show that the defendant, Ed. Johnson, has made statements to the effect that he intended to gamble in spite of law and the efforts of officials to stop him. You should consider this testimony only [126] in determining the guilt or innocence of said defendant, Ed. Johnson. You should not consider it as affecting the guilt or innocence of the other defendants.

9½A.

There has been some testimony tending to show that the defendant, Adelbert G. Gumaer, made an admission of his guilt in the presence of the witness, J. H. Young. You should consider this testimony only in determining the guilt or innocence of said defendant Gumaer, and not as affecting the other defendants.

9½B.

The defendants have entered a plea of former conviction in this case, but there being no evidence admitted upon that plea, I instruct you that you are not to give the same any consideration.

10.

I submit to you three forms of verdict. If you

should find all of the defendants guilty of both counts of the indictment you should return the verdict finding all of the defendants guilty as charged. If you should find that no one of the defendants is guilty of either count in the indictment, then you should return the verdict finding all of the defendants "not guilty." If you should find the defendants "guilty" of one count only of the indictment, and "not guilty" of the other count, or you should find some of the defendants guilty of both counts [127] and the others not guilty of both, then you should return the third form of verdict filling in the names of the defendants whom you find guilty, if any, in your verdict on each count of the indictment in the blank space left for that purpose; and likewise filling in the names of the defendants not guilty in the blank space left for that purpose.

When you have retired to your jury-room and have agreed upon your verdict, you should have your foreman, to be selected by yourselves, sign the one upon which you unanimously agree and return it into court as your verdict in this case.

You may take into the jury-room for your guidance these instructions, the exhibits, and the indictment.

Let the bailiffs be sworn.

You may now retire, gentlemen, to deliberate upon your verdict.

J. R. TUCKER,
District Judge. [128]

AND THEREUPON in the presence of the jury and before they retired to consider their verdict, the

defendants took the following exceptions to the instructions of the Court and for the refusal of the Court to give certain instructions, as follows:

Exceptions to Instructions of the Court and to Refusal to Give Certain Instructions.

1. Defendants except to the following charge given by the Court in his instructions to the jury:

"It is the duty of the Judge of this court to instruct you upon the law applicable to the case and the statute makes it your duty to accept as law what is laid down by the Court as, such in these instructions, and if you should knowingly refuse to do so you would be liable as for contempt of court."

For the reason that said instruction is against law and prejudicial to the defendants in that said instruction tended to coerce the jurors to agree upon a verdict and tended to cause the jurors to fear punishment in the event of failing to agree upon a verdict or in the event of failing to find defendants guilty.

2. Defendants except to the following instruction given by the Court to the jury:

"I instruct you that the testimony of one witness, if believed by you, is sufficient to establish any material fact in the case unless such witness is an accomplice. If you believed from the evidence that that witness N. B. Nelson was employed by the United States Marshal for this Division to engage in the apprehension of persons violating the law by gambling, and that in pursuance of said employment [129] the said Nelson engaged in a gambling game, if any, with the defendants, then I in-

struct you that said Nelson is not an accomplice with the defendants, and you should give this testimony the same weight and consideration as you would have done if he had been present and had testified to the same matters without participating in the game.

On the other hand, if you believe from the evidence that the said witness N. B. Nelson was not employed by the United States Marshal or that he did not engage in the gambling game, if any, with the defendants, for the purpose of apprehending them, then I instruct you that he was an accomplice and his testimony connecting the defendants with the game, of any, must be corroborated by some other evidence which tends to connect the defendants with the game. However, his testimony as to the character and elements of the game need not be corroborated even though he be an accomplice. In other words the testimony of an accomplice is sufficient, if you believe it, to establish that a certain game played with cards for money, checks, chips or credits of value was being played at a certain time and place, without any corroboration whatever. But his testimony as to who was engaged in or connected with the game, of any, must be corroborated by some other evidence tending to connect the defendants with the game.

Hence, the testimony of said witness N. B. Nelson, whether you find that he was an accomplice or not, if you believe it, is sufficient to establish the kind of a game that was being played if any; the means or instrumentalities used in playing such

game, if any; and the nature and value of the "stakes" for which such game was being played, if any. However, his testimony, if any, connecting the defendants with the game, must be corroborated as heretofore stated, in case you find him to be an accomplice, but not otherwise."

For the reason that said instruction is against law. [130]

3. Defendants except to the following instruction given by the Court to the jury;

"The Government has introduced certain evidence in this case tending to show that the defendants were playing for certain chips on which the value in trade of each chip is printed. I instruct you that the printing on each of such chips is sufficient evidence to establish the value thereof, since no evidence has been introduced to explain or contradict the printing thereon."

For the reason that said instruction is against law, and for the reason that said instruction contains an incorrect statement as to the evidence introduced in the case, the witness N. B. Nelson having testified as to the value of the chips referred to and having placed a different value thereon than that indicated by the printing on said chips.

4. Defendants except to the following instruction given by the Court to the jury:

"The owner or lessee of a building or room cannot lease or sublet such building or room for an unlawful purpose, or knowingly permit it to be used for an unlawful purpose without being held guilty of the commission of the unlawful act or acts tran-

spiring in such building or room. If you should find from the evidence in this case that one of the defendants held the room in which gambling is alleged to have been conducted under a lease from the owner, and you further find that gambling as alleged was being conducted there, then I instruct you that such owner or lessee is guilty if he knew that such gambling was being carried on there whether he had any connection with the game or not.

It follows therefore, that if you find gambling was being carried on in the room known as the Arctic Billiard-room [131] or Parlor, and that said room was held by defendant under a lease from the owner, either oral or written, then I instruct you that such defendant is guilty if he knew that such room was being used for the purposes of gambling, and a game of stud poker or pangingi played with cards for money or chips of value was held in said room on the night in question, and the owner of said room is likewise guilty under same conditions if he knew them to exist.

Again, if you find that a game of stud poker or pangingi was played with cards for money or chips of value on the night in question, in said room, and the defendant had anything to do with said game such as dealer, player, owner, proprietor, or employee, then I instruct you that the defendant is guilty, and it does not matter whether he was the lessee or owner of said room and had previous knowledge of said game or not."

For the reason that same is against the law.

5. Defendants except to the following instruc-

tion given by the Court to the jury:

"I have permitted evidence to be introduced in this case tending to show gambling to have been carried on in the room known as the Arctic Billiard-room at other times prior to the time alleged, for the purpose of establishing the knowledge of the owner and lessee of said room that gambling was being carried on there and you should consider it for no other purpose. As to what extent such testimony tends to show such knowledge on the part of the defendant is for you to determine."

For the reason that same is against the law.

6. Defendants except to the following instruction given by the Court to the jury:

"There has been some testimony tending to show that the defendant, Ed. Johnson, has made statements to the effect that he intended to gamble in spite of law and the efforts of [132] officials to stop him. You should consider this testimony only in determining the guilt or innocence of said defendant, Ed Johnson. You should not consider it as affecting the guilt or innocence of the other defendants."

For the reason that same is against the law.

And the Court refused to give the following instruction requested by the defendants:

"You are instructed that a conviction cannot be had upon the testimony of an accomplice unless he be corroborated by such other evidence as tends to connect the defendants with the commission of the crime, and the corroboration is not sufficient if it merely shows the commission of the crime or the cir-

cumstances of the commission."

To the refusal of the Court to give such instruction the defendants excepted and an exception allowed.

And the Court refused to give the following instruction requested by the defendants:

"You are instructed that if you believe from the evidence in this case the witness N. B. Nelson to have been an accomplice of the defendants, or any of them, with relation to the crime or crimes charged in the indictment, then you are instructed that unless the evidence of the witness N. B. Nelson with relation to the crime charged be corroborated by other evidence tending to show that the defendants, or some of them, actually played cards for money, then you should acquit.

It is not sufficient, in case you find N. B. Nelson to have been an accomplice, that his evidence be corroborated with respect [133] to matters which do not necessarily involve the guilt of the accused. He must be corroborated in matters which bear directly upon the guilt of the accused of the offense of gambling."

To the refusal of the Court to give such instruction the defendants excepted and an exception allowed.

And the Court refused to give the following instruction requested by the defendants:

"The indictment in this case charges the defendants with having played certain games of cards for money at the time and place charged in the indictment. If you are satisfied from the evidence that

the defendants, or any of them, did actually play the game of cards mentioned in the indictment at the time and place charged, then it will be for you to determine whether or not such game or games were played for money or representative of value and in determining this necessary element of the crime charged, you are instructed that a conviction cannot be had upon the uncorroborated testimony of an accomplice and if you should find from the evidence that the witness N. B. Nelson was an accomplice and there is no other testimony in the case than his tending to prove that gambling actually took place, then it will be your duty to acquit the defendants."

To the refusal of the Court to give such instruction the defendants excepted and an exception allowed.

And the Court refused to give the following instruction requested by defendant:

"You are instructed that the testimony of an accomplice should be viewed with distrust."

To the refusal of the Court to give such instruction the defendants excepted and an exception allowed. [134]

And the Court refused to give the following instruction requested by the defendants:

"Evidence has been introduced in this case tending to show that one Charles Mason was present in company with the defendants at the time of the arrest of the defendants for the crime charged in the indictment. The said Charles Mason was called as a witness for the Government in this case and re-

fused to answer certain material questions propounded to him basing his refusal on the ground that his answer to the questions might tend to criminate him.

You are instructed that you are not to draw any inference prejudicial to the defendants in this case on account of said refusal on the part of said Mason to answer such questions, and such refusal should in no way be considered by you in determining the guilt or innocence of the defendants, or any of them."

To the refusal of the Court to give such instruction the defendants excepted and an exception allowed.

And the Court refused to give to the jury the following instruction requested by defendants:

"You are instructed with reference to a certain stipulation introduced in evidence in this case and marked Plaintiff's Exhibit 'H,' which stipulation is to the effect that certain witnesses, if present, would refuse to answer any material questions propounded to them, basing their refusal on the ground that their answers to such questions might tend to criminate them, that such stipulation has no probative force whatever and should not be considered by you at all in determining the guilt or innocence of the defendants, and that if the witnesses mentioned in said stipulation had been present in court and refused to answer on the grounds mentioned, such refusal would in no way tend to prove the guilt of the defendants."

To which refusal defendants excepted and an exception [135] allowed.

And the Court refused to give to the jury the following instruction requested by the defendants:

"You are instructed that the defendants are presumed to be innocent until their guilt is established to a moral certainty and beyond a reasonable doubt. They are clothed with this presumption, not only at the outset but during all stages of the trial and until the jury determines otherwise."

To which refusal of the Court the defendants excepted and an exception allowed.

And the Court refused to give to the jury the following instruction requested by the defendants:

"The evidence in this case shows that E. R. Jordan paid the witness N. B. Nelson a sum of money out of his own personal funds to investigate gambling conditions in the town of Nome. You are instructed that no private person can hire another to participate in a criminal offense even though such participation be for the purpose of detecting other guilty persons and relieve such participant from criminal responsibility, therefore if you believe from the evidence that E. R. Jordan hired the witness Nelson and paid him out of his own personal funds and that the said Nelson participated in the game pursuant to said employment, the said Nelson would be and is an accomplice of all engaged in said game."

To which refusal defendants excepted and an exception allowed. [136]

AND THEREUPON the jury having retired for deliberation upon Saturday the 29th day of April,

1916, at the hour of 3 o'clock P. M. and having returned into court on Monday, the 1st day of May, 1916, and having reported to the Court that they were unable to agree upon a verdict, theCourt thereupon read to the jury the following instruction which was in writing:

"GENTLEMEN OF THE JURY:

Upon the evidence and instructions in this case you should be able to reach a verdict.

The evidence in this case is plain, and the law is plain as I have pointed out to you in my written instructions.

Now, I shall give you a longer time for a further and more serious consideration of this case. When you retire to the jury-room again read over the instructions of the court carefully and if there is anything about them you do not understand, so advise the Court and I will endeavor to make the same plain to you. It is your duty to arrive at a verdict in the case according to the evidence and the instructions given you, irrespective of all other considerations.

You may now retire for further consideration of the case.

J. R. TUCKER,
Judge."

May 1, 1916.

To which instruction defendants then and there excepted on the ground that said instruction was an attempt to influence the jury to return a verdict against their consciences, the jury then having been deliberating for more than forty (40) hours; [137]

And thereafter, on said first day of May, 1916, the jury in this case came into open court and rendered the following verdict.

In the District Court for the District of Alaska, Second Division.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ED JOHNSON, A. C. LAIRD, FRANK KOIBETITZ, JOHN NOVOSEL, NICK SKORLICH, ALFRED PIERSON, ADELBERT G. GUMAER,

Defendants.

Verdict.

We, the trial jury, duly empaneled to try the above-entitled cause, find the defendants Ed Johnson and A. C. Laird guilty as charged in the first count of the indictment, and the defendants Frank Koibetitz, John Novosel, Nick Skorlich, Alfred Pier son, Adelbert G. Gaumaer, not guilty on said first count.

And we further find the defendants Ed Johnson, A. C. Laird, Frank Koibetitz, John Novosel, Nick Skorlich, Alfred Pierson, Adelbert G. Gumaer, not guilty on said second count.

M. LOERPABEL,

Foreman.

Which verdict was received by the Court and ordered filed as the verdict of the jury. [138]

AND THEREAFTER, on the 5th day of May, 1916, upon the foregoing verdict, judgment was ren-

dered against the defendants Ed Johnson and A. C. Laird as follows:

In the District Court, District of Alaska, Second Division.

No. 1036.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ED JOHNSON, A. C. LAIRD, FRANK KOIBETITZ, JOHN NOVOSEL, NICK SKORLICH, ALFRED PIERSON, ADELBERT G. GUMAER,

Defendants.

Judgment.

Now, at this time this cause coming on in open court for the passing of sentence and judgment in this case, the defendants Ed Johnson and A. C. Laird, appearing in person and by Geo. B. Grigsby and Hugh O'Neill, their counsel, and the United States appearing by F. M. Saxton, United States Attorney for the Second Division of the District of Alaska, and it appearing to the Court that heretofore on the 6th day of April, 1916, the grand jury returned and filed in the above-entitled court an indictment charging above-named defendants with the crime of gambling in two counts, and it further appearing that thereafter on the 8th day of April, 1916, said defendants appearing in person and by their said counsel in open court and were duly arraigned, and thereafter on the 11th day of April,

1916, the Court having overruled defendants' motion to quash and demurrer to said indictment the said defendants appeared in person and pleaded "not guilty" to said indictment, and thereafter on the 26th day of April, 1916, said cause coming on regularly for trial, and the said defendants appearing in person and by their said counsel, and a jury having been duly and regularly empaneled, and witnesses sworn and examined, and said cause having been argued by counsel, and said jury having [139] been instructed by the Court, and said cause having been on the 29th day of April, 1916, submitted to said jury, and said jury thereafter on the first day of May, 1916, having returned against said defendants Ed Johnson and A. C. Laird, a verdict of guilty of the crime charged in the first count, of the said indictment, and the said Court at said time having fixed the 5th day of May, 1916, at 10 o'clock A. M. as the time for imposing sentence upon said defendants, and the said time having now arrived, and the said defendants appearing in person and by their said counsel and interposing no reason why sentence should not now be pronounced,—

IT IS NOW THEREFORE CONSIDERED, ORDERED AND ADJUDGED that the defendant Ed Johnson be, and he hereby is, fined in the sum of Five Hundred Dollars ($500) and that the United States as plaintiff herein have judgment against the said defendant Ed Johnson for the sum of said fine of $500 and the costs of this action taxed at $364.95, and that in default of the payment of said fine and costs the said defendant be imprisoned in the Fed-

eral Jail at Nome, Alaska, one day for each two dollars thereof, not exceeding one year.

AND IT IS FURTHER CONSIDERED, ORDERED AND ADJUDGED that the defendant A. C. Laird be, and he hereby is fined in the sum of Five Hundred Dollars ($500) and that the United States as plaintiff herein have judgment against the said defendant A. C. Laird for the sum of said fine of $500 and the costs of this action taxed at $364.95, and that in default of the payment of said fine and costs the said defendant be imprisoned in the Federal Jail at Nome, Alaska, one day for each two dollars thereof, not exceeding one year.

IT IS FURTHER CONSIDERED, ORDERED AND ADJUDGED that said judgments including said fine and costs be docketed [140] against each of the defendants as in case of judgments in civil causes, and that plaintiff have execution therefor; that said judgment for costs shall be joint and several against the said defendants.

IT IS FURTHER ORDERED that said defendants be, and they hereby are remanded to the custody of the United States Marshal for the Second Division of Alaska for the execution of these judgments.

And it further appearing to the court that the United States Marshal for this division did take from the possession of said defendants at the time at which the crime was committed upon which the said defendants have been convicted, and from the room in which said crime was committed, then and there being used by the defendants in gambling, the

following described gambling implements, to wit:

1 deck of cards, being Plaintiff's Exhibit "A" herein;

1 bunch of chips, being Plaintiff's Exhibit "B" herein;

8 decks of cards, being Plaintiff's Exhibit "C" herein;

1 bunch of chips, being Plaintiff's Exhibit "D" herein;

1 box cards and chips, Plaintiff's Exhibit "E" herein;

1 stud poker-table, Plaintiff's Exhibit "F" herein;

1 Panginge table, Plaintiff's Exhibit "G" herein.

IT IS THEREFORE FURTHER CONSIDERED, ORDERED AND ADJUDGED that the United States Marshal for the Second Division of the District of Alaska be, and he hereby is authorized and directed to destroy the said gambling implements and all thereof, and a certified copy of this order shall be his authority and warrant for so doing.

Dated at Nome this 5th day of May, 1916.

J. R. TUCKER,
District Judge. [141]

Whereupon the defendants then and there excepted to said judgment which exception was then and there allowed.

And now in furtherance of justice and that right may be done, the defendants tender and present the foregoing as their bill of exceptions in the above-entitled cause, and pray that the same may be settled and allowed, and that the same may be signed and

certified to by the above-entitled court and become and be made a part of the record in the above-entitled cause.

GEORGE B. GRIGSBY,
HUGH O'NEILL,
Attorneys for Defendants.

Service of the within and foregoing Bill of Exceptions admitted this 31st day of May, 1916.

F. M. SAXTON,
U. S. District Attorney. [142]

In the District Court for the District of Alaska, Second Division.

No. 1036–C.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

ED. JOHNSON, A. C. LAIRD, FRANK KOIBETITZ, JOHN NOVOSEL, NICK SKORLICH, ALFRED PIERSON and ADELBERT G. GUMAER,
Defendants.

Order Settling and Allowing Bill of Exceptions.

The foregoing bill of exceptions having been served, filed and presented for settlement within the time allowed by law, and being full, true and correct, and containing all the evidence introduced at the trial, the same is hereby settled and allowed.

Done at Nome, Alaska, this 7th day of June, 1916.

J. R. TUCKER,
District Judge.

[Endorsed]: In the District Court for the District of Alaska, Second Div., United States of America, Plaintiff, vs. Ed. Johnson, A. C. Laird, et al., Defendants. Bill of Exceptions. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. May 31, 1916. G. A. Adams, Clerk. By ————, Deputy, F. W. L. Refiled in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Jun. 7, 1916. G. A. Adams, Clerk. By W. C. McG., Deputy. George B. Grigsby and Hugh O'Neill, Attys. for Defendants. [143]

In the District Court for the District of Alaska, Second Division.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ED. JOHNSON, A. C. LAIRD, FRANK KOIBETITZ, JOHN NOVOSEL, NICK SKORLICH, ALFRED PIERSON and ADELBERT G. GUMAER,

Defendants.

Order Extending Time to Prepare, etc., Bill of Exceptions, Until and Including May 29, 1916.

IT IS HEREBY ORDERED AND DIRECTED that the time within which defendants herein may prepare, serve and file the bill of exceptions in the above-entitled action is extended until and including the 29th day of May, 1916.

Dated at Nome, Alaska, this 23d day of May, 1916.

J. R. TUCKER,
District Judge.

[Endorsed]: In the District Court for the District of Alaska, 2d Div. United States of America, Plaintiff, vs. Ed. Johnson et al., Defendants. Order. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. May 23, 1916. G. A. Adams, Clerk. By ————, Deputy. F. W. L. Orders and Judgments, vol. 11, page 244. [144]

In the District Court for the District of Alaska, Second Division.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

ED. JOHNSON, A. C. LAIRD, FRANK KOIBETITZ, JOHN NOVOSEL, NICK SKORLICH, ALFRED PIERSON and ADELBERT G. GUMAER,
Defendants.

Order Extending Time to Prepare, etc., Bill of Exceptions, Until and Including May 31, 1916.

IT IS HEREBY ORDERED AND DIRECTED that the time within which defendants herein may prepare, serve and file the bill of exceptions in the above-entitled action is extended until and included the 31st day of May, 1916.

Dated at Nome, Alaska, this 29th day of May, 1916.

J. R. TUCKER,
District Judge.

[Endorsed]: 1036. In the District Court for the District of Alaska, 2d Div. United States of America, Plaintiff, vs. Ed. Johnson, A. C. Laird et al., Defendants. Order. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. May 29, 1916. G. A. Adams, Clerk. By ————, Deputy. L. Orders and Judgments, vol. 11, page 245. [145]

In the District Court for the District of Alaska, Second Division.

No. 1036–C.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

ED. JOHNSON, A. L. LAIRD, FRANK KOIBETITZ, JOHN NOVOSEL, ALFRED PIERSON and ADELBERT G. GUMAER,
Defendants.

Assignment of Errors.

Come now the defendants Ed. Johnson and A. C. Laird, plaintiffs in error, and file the following assignment of errors upon which they will rely in their prosecution of the writ of error in the above-entitled cause:

I.

The Court erred in overruling the defendants' de-

murrer to the indictment in this case, which demurrer was on the following gounds:

1st. That said indictment does not state facts sufficient to constitute a crime.

2d. That more than one crime is charged in said indictment.

3d. That two offenses are improperly joined in said indictment.

4th. That said indictment does not substantially conform to the requirements of Chapter VII, Title 15 of the Compiled Laws of Alaska.

5th. That there is a misjoinder of parties defendant in said indictment.

II.

That the Court erred in overruling the defendants' motion to quash the indictment in this case, which motion and affidavit in support thereof were as follows: [146]

Motion to Quash.

Come now the defendants in the above-entitled cause by and through their attorneys, George B. Grigsby and Hugh O'Neill, and move the Court to quash the indictment herein on the following ground:

That said defendants and each of them have been once in jeopardy for each of the offenses charged in said indictment in this: That on the 8th day of January, 1916, said defendants were tried in the U. S. Commissioner's Court for Cape Nome Precinct, Second Division of the Territory of Alaska for the identical offenses charged in said indictment, by James Frawley, U. S. Commissioner *Ex-officio* Jus-

tice of the Peace, on an information theretofore filed in said Commissioner's court, which information was entitled "United States of America, Plaintiff, vs. Ed. Johnson, A. C. Laird, Frank Koibetitz, John Novosel, Nick Skorlich, Chas. Mason, Alfred Pierson, B. Garnard, A. Hanson, N. B. Nelson, defendants."

This motion is based upon the records, proceedings and files of said U. S. Commissioner's Court in said action, and on the affidavit of George B. Grigsby hereunto annexed and made a part hereof.

Dated at Nome, Alaska, this 11th day of April, 1916.

GEORGE B. GRIGSBY,
HUGH O'NEILL,
Attorneys for Defendants.

Affidavit of George B. Grigsby.

United States of America,
Territory of Alaska,
Second Division,—ss.

George B. Grigsby, being duly sworn, on oath deposes and says:

That he is one of the attorneys for the defendants herein. That on the 7th day of January, 1916, an information was filed [147] in the U. S. Commissioner's Court for the Precinct of Cape Nome, Second Division, of the Territory of Alaska, charging the defendants herein with the identical offenses charged, or attempted to be charged, in the indictment herein. That affiant represented the defendants herein in all proceedings in said U. S. Commissioner's Court in relation to said offenses.

That on the 7th day of January, 1916, at the hour of 2 o'clock P. M. of said day, affiant appeared in said U. S. Commissioner's Court as attorney for all of said defendants in said action theretofore commenced by the filing of said information and requested the Court to enter a plea of not guilty for each of said defendants and demanded a jury trial. That thereafter said U. S. Commissioner, James Frawley refused said demand for a jury trial and proceeded to hear the evidence in said action and thereafter failed and refused to find the defendants, or any of them, guilty or not guilty of the offenses charged, or either of them, but did order all of said defendants except Charles A. Mason, A. Hanson and N. B. Nelson to be held to answer to the District Court.

That by reason of the information filed in said Commissioner's Court against said defendants and their appearance personally and by attorney and the laws of Alaska the said James Frawley, United States Commissioner, had jurisdiction of said action and jurisdiction of the person of the defendants and jurisdiction to try said action as *ex-officio* Justice of the Peace.

WHEREFORE affiant alleges that the defendants herein have been in jeopardy by reason of having already been tried for the identical offenses charged, or attempted to be charged, in said indictment, and that the above-entitled court is without jurisdiction.

GEORGE B. GRIGSBY.

Subscribed and sworn to before me this 11th day of April, 1916.

[Seal] D. B. CHACE,
Notary Public for the Territory of Alaska, Residing at Nome.

(My commission expires May 12th, 1917.) **[148]**

III.

The Court erred in sustaining the motion of the United States Attorney for a continuance of this case from April 17th 1916, until April 18th, 1916, as appears by the Bill of Exceptions herein.

IV.

The Court erred in sustaining the motion of the U. S. Attorney for a continuance of this case from April 18th, 1916, until April 19th, 1916, as appears by the Bill of Exceptions herein as follows:

Thereupon pursuant to adjournment proceedings were resumed at 10 o'clock Tuesday morning, April 18th, 1916.

F. M. Saxton moved the Court that the case be continued until the next day at 10 o'clock A. M. on the ground that the United States was unable to find the witnesses previously referred to.

Whereupon the following proceedings were had:

Mr. O'NEILL.—I think the District Attorney should be compelled to set this case far enough ahead so he can get his witnesses here.

The COURT.—I don't care to hear any argument in this case. As long as there is any possibility of finding these witnesses I am going to continue this case from day to day and that possibility will be determined by the information I get from the District Attorney.

V.

The Court erred in sustaining the motion of the United States Attorney to continue the case from April 19th, 1916, until April 20th, 1916, as appears from the Bill of Exceptions herein.

VI.

The Court erred in sustaining the motion of the U. S. Attorney that the case be continued from April 20th, 1916, until **[149]** April 21st, 1916, as appears from the Bill of Exceptions herein.

VII.

The Court erred in sustaining the motion of the U. S. Attorney to continue the case from April 21st, 1916, until April 24th, 1916, as appears from the Bill of Exceptions herein.

VIII.

The Court erred in sustaining the motion of the U. S. District Attorney to continue this case from April 24th, 1916, to April 26th, 1916.

IX.

The Court erred in overruling the motion of the defendants herein that a special officer be appointed to serve the special venire issued herein upon the 26th day of April, 1916, which motion and the affidavit in support thereof were as follows:

Motion.

Come now the defendants in the above-entitled cause and move the Court that a special officer be appointed to serve the venire for additional jurors about to issue herein on the ground that the United States Marshal and his deputies are not indifferent

persons and are interested in the event of the above-entitled cause.

This motion is based upon the affidavit of Geo. B. Grigsby hereto atached and made a part hereof.

GEORGE B. GRIGSBY,
HUGH O'NEILL,
Attorneys for Defendants. **[150]**

Territory of Alaska,
Second Division,—ss.

George B. Grigsby, being first duly sworn, deposes and says:

That the above-entitled action came on for trial on the 12th day of April, 1916, in the above-entitled court and thereafter on the 14th day of April, 1916, resulting in a disagreement of the jury and was immediately set for retrial for the 17th day of April, 1916.

That on said previous trial of said case one N. B. Nelson testified that on the 30th day of December, 1915, he was employed by E. R. Jordan, the United States Marshal for the Second Division, District of Alaska, to look up gambling in the town of Nome; that thereafter, pursuant to said employment the said Nelson on five or six different evenings played "stud poker" for money in a place known as the Arctic Billiard Parlors, the last occasion of said playing being on the 5th day of January, 1916; that on said last mentioned occasion he, the said Nelson, played "stud poker" for money with certain of the defendants above-named and during the progress of the game left the place where the same was being

carried on and reported the existence of the game to Deputy Marshal Phil Holland; that thereupon said Nelson returned to said Arctic Billiard Parlor and shortly thereafter said Phil Holland, together with said Chief Deputy Marshal A. B. Miller and Deputy Marshals Elmer Reed and Joel Terrell entered said place and arrested the defendants herein without warrant; that said E. R. Jordan testified at said, former trial that he did employ the said N. B. Nelson as testified to by the said Nelson and paid him for his said services the sum of sixty-five dollars with money belonging to him personally; that on the trial of said action one Perry Moore testified that shortly before the 25th day of December, 1915, he heard the said Deputy Marshal Phil Holland say to defendant Ed. **[151]** Johnson, "I am coming after you and I'm going to get you." That said E. R. Jordan and all of his deputy marshals above-named were witnesses against the defendants on said former trial, and with the exception of N. B. Nelson and the said deputy marshals above-named, there was no evidence offered by the Government tending to prove that the defendants, or any of them, played the games of cards mentioned in the indictment herein, nor any evidence whatever that said games were played for money, except the evidence of the said N. B. Nelson.

WHEREFORE affiant alleges that the said United States Marshal E. R. Jordan and his said deputies are not indifferent persons for the summoning of jurors herein as required by Sec. 803, R. S. That said prosecution originated in said marshal's office

without the complaint of any private citizen, and that by reason of the foregoing facts the said United States Marshal E. R. Jordan and his said deputies are unduly interested in the securing of a conviction herein.

GEORGE B. GRIGSBY.

Subscribed and sworn to before me this 17th day of April, 1916.

[Seal] D. B. CHACE,
Notary Public in and for the Territory of Alaska.

X.

The Court erred in denying and overruling the challenge for cause made by the defendants to the juror W. H. Pearson as follows:

Q. And so if you went into the trial of this case you already have quite a strong opinion as to the guilt or innocence of the defendants? **[152]**

A. Yes, sir.

Q. Which would remain with you unless evidence was introduced to change it? A. Yes, sir.

Q. And if there was no evidence introduced to change it, it would affect your judgment?

A. If it wasn't changed it certainly would.

Q. So that would necessarily affect your verdict, would it not? A. Yes, sir.

Q. Unless there was some evidence in the case strong enough to change your present opinion your verdict would be affected by your opinion.

A. Yes, sir.

* * * * * * * * *

Q. You say, Mr. Pearson, that that opinion would require some evidence to remove?

A. Yes, sir.

Q. And that if no evidence was offered having a tendency to change your present opinion, then your present opinion would affect your verdict?

A. I don't know as I just understand you.

Q. Well you have an opinion now as to the guilt or innocence of the accused? A. Yes, sir.

Q. Which would require evidence to change?

A. Yes, sir.

Q. Now, if no evidence was offered having a tendency to change your present opinion then your present opinion would affect your verdict?

A. Yes, if there was no evidence to change it.

[153]

* * * * * * * * *

Q. Now, what do you mean by a fixed opinion, Mr. Pearson? You say that your opinion is a fixed opinion.

A. Well, if there is nothing comes up to change it.

Q. Then you are in a state of mind where you could already render a verdict if nothing came up to change your opinion? A. Yes, sir.

* * * * * * * * *

Q. Now, you are sure you have a fixed opinion as to the guilt or innocence of some of the defendants. I will ask you if you were charged with the crime of gambling, if you would be satisfied to be tried by a juror in your present frame of mind as regards this case?

A. Well, no, I don't think I would.

Q. Do you think it would be fair to be tried by jurors in your present frame of mind?

A. No, sir.

Q. Supposing every juror on this panel has your opinion in this case, do you think that these defendants would have a fair trial? A. Well—

Q. Would you call that a fair trial?

A. If they go strictly according to the evidence.

* * * * * * * * *

Q. Supposing every juror here had your present fixed opinion relating to the guilt or innocence of these defendants, and you were the defendant, would you be satisfied to be tried by that kind of a jury? A. I would if I could prove I was innocent.

Q. If you could prove you were innocent?

A. Yes, sir.

WHEREUPON counsel for the defendants challenged the said [154] juror upon the ground of actual bias, which said challenge the said court overruled, to which ruling of the Court an exception was then and there allowed.

Whereupon defendants excused the juror Pearson peremptorily.

XI.

The Court erred in overruling and denying the application of defendants to exercise a fourth and additional peremptory after the defendants had exhausted the peremptory challenges allowed by law.

XII.

The Court erred in overruling the objection of the defendants to the following testimony of the witness Phil Holland testifying on behalf of the Government: "They were playing 'pangingui' at the table I was at. Mr. Johnson, Mr. Novosel, Mr.

Koibetitz, Mr. Pierson and Mr. Mason were sitting at the 'pangingui-table.' I will have to examine my memorandum again." (Witness refers to paper.)

Mr. GRIGSBY.—We object to the witness referring to any memorandum.

The COURT.—Overruled.

To which ruling of the Court the defendants excepted and an exception was allowed.

WITNESS.—(Continuing.) "The memorandum I refer to is something made after the persons arrested came to the jail."

XIII.

The Court erred in overruling the objection of the defendants to the admission of certain evidence of the witness Phil Holland, as follows:

"I also took in my possession the checks and chips that were on this 'pangingui-table.' (Package of checks or chips **[155]** handed to witness.) Yes, these are the checks I got at that time. They were before each of the players at the 'pangingui-table.' There might have been a few out in the center of the table but I am not positive as to that."

Package of checks referred to offered in evidence.

Mr. O'NEILL.—I would like to examine him before these checks are admitted.

Q. (By Mr. O'NEILL.)—Mr. Holland, where did you get those checks?

WITNESS.—(Continuing.) On the table, on the "Pangingui-table." I did not put any specific mark of identification upon any of these checks, nor have them in my exclusive possession from the time I

took them until the present time. I took them and put them in my pocket until we got to the jail and then I put them in that sack and I left them there in the jail and turned them over to the court the next day. I left them with the jailor. I think Mr. McKay was the jailor that night. I left them at the jail. I don't recognize the bag. It was one similar to that and the checks were similar to those.

Q. You could not swear those were the specific checks? A. Checks similar to these here.

Mr. O'NEILL.—We object to the admission of the checks upon the ground that there is no foundation laid, no proper identification.

The COURT.—Objection overruled.

To which ruling the defendants excepted and an exception was allowed.

And thereupon a paper bag of checks containing an assortment of orange and blue pasteboard checks or chips with certain printing thereon was received in evidence, and marked Plaintiff's Exhibit "D." **[156]**

XIV.

The Court erred in sustaining the objection made by the Government to the following question propounded to the witness Phil Holland:

Q. Now, after Nelson had made this report about this particular place, did you direct him to look up other places?

Mr. SAXTON.—Objected to as immaterial.

Mr. GRIGSBY.—It shows the interest of the witness and is proper cross-examination.

The COURT.—Objection sustained.

To which ruling of the Court the defendants excepted and an exception was allowed.

XV.

The Court erred in sustaining the objection of the Government to the following question propounded to the witness Phil Holland:

Q. Did you ever ask him if he had ferreted out any other gambling in Nome?

To which question the Government objected and the Court sustained the objection and an exception was then and there allowed to the defendants.

XVI.

The Court erred in overruling the objection made by the defendants to the following questions propounded to the witness Phil Holland on redirect examination as follows:

Q. When you made the arrest on the night of the 5th of January last, did you afterwards go back and make further search of the premises?

Mr. O'NEILL.—Objected to as incompetent, irrelevant and immaterial, *res inter alios acta,* no part of the *res gestae,* no connection shown and no foundation laid. [157]

The COURT.—Objection overruled.

To which ruling of the Court the defendants excepted and an exception was allowed.

A. I did. I searched the lower floor and I searched the upper floor. I got out a search warrant.

Q. What were you looking for?

Mr. O'NEILL.—Same objection, same grounds.

The COURT.—Overruled.

To which ruling of the Court the defendants excepted and an exception was allowed.

A. Well checks, dice, gambling tools. I found under that search warrant on these premises and took in my possession playing cards and checks and gave a receipt for them.

WITNESS.—(Continuing.) Yes, those checks in that drawer you showed me are the checks I refer to, to the best of my belief. I took them with me and turned everything over to the court on the day of the trial. These are the checks and cards.

(Drawer, checks and cards offered in evidence.)

Mr. O'NEILL.—Objected to on the ground that they are immaterial, not connected with the crime, and calculated to prejudice the jury against the defendants.

The COURT.—Objection overruled.

To which ruling of the Court the defendants excepted and an exception was allowed.

(Drawer containing box of playing-cards and decks of playing-cards, assortment of chips and checks and a coin rack admitted in evidence and marked Plaintiff's Exhibit "C."

XVII.

The Court erred in ruling out a certain question propounded to the witness Phil Holland on recross-examination, as follows:

Q. What other places did you suspect? **[158]**

The COURT.—Don't go into that.

Mr. GRIGSBY.—It is to show the prejudice of this witness; if he had a personal prejudice against the defendants I have a right to show it. (Argu-

ment.) If he knew of a dozen other places and he confines his attention to one it shows a personal *animus* against those defendants which I have a right to show to affect his credibility before the jury.

The COURT.—I rule it out.

To which ruling of the Court the defendants excepted and an exception was allowed.

XVIII.

The Court erred in ruling out a certain question propounded by the defendants to the witness Phil Holland on recross-examination as follows:

Q. Mr. Holland, will you explain to the jury your motive after you had arrested these defendants on the information given you by "Black Nels" and after the preliminary examination in which yourself, Mr. Miller and the other deputies testified you caught them playing "pangingui" and "stud poker" and produced checks and cards that they were playing with, what was your motive in going back and getting these tables?

The COURT.—I rule the question out.

To which ruling of the Court the defendants excepted and an exception was allowed.

IX.

The Court erred in refusing to compel the witness E. R. Jordan to answer a certain question propounded to him by the defendants as follows: [159]

Q. How did you employ Nelson and in what respect?

A. I told him to go down and look up any gambling and report to the office. I did that in my official capacity.

Q. Why did you pay him out of your private funds? A. That is my business.

Mr. O'NEILL.—Now, if your Honor please, I am not going to stand for the impudence of this witness.

The COURT.—I don't think the witness is impudent. Take your seat. He has a right to pay his own money if he wants to.

Mr. O'NEILL.—I have a right to know why he paid his own money to show the *animus* of the witness, if any there be.

The COURT.—He has stated because he chose to do so.

Mr. O'NEILL.—He said it was his business. I want to know why he chose to do so.

Defendants excepted to the ruling of the Court in refusing to compel the witness to answer the question, and an exception was allowed.

XX.

The Court erred in overruling the objection made by the defendants to the following testimony of the witness Wm. Dougherty testifying on behalf of the Government, to wit:

"Some time prior to the 5th of January, 1916, the defendant Ed. Johnson, in my presence, made a statement as to his intention with reference to carrying on gambling here in Nome. He said he was going to gamble, he intended to gamble."

Mr. GRIGSBY.—I didn't notice the question, if your Honor please. I ask leave to have an objection entered on the ground it is too remote, doesn't tend to show whether or not the crime was committed on the 5th of January, as charged in the indictment.

The COURT.—Objection noted and overruled.

To which ruling of the Court the defendants excepted and an exception was allowed.

WITNESS.—(Continuing.) That statement was made somewhere along in October, 1915.

Mr. GRIGSBY.—We move that the answer be stricken out as fixing the time too remote to have any bearing on this case.

The COURT.—Overruled.

To which ruling the defendants excepted and an exception was allowed.

XXI.

The Court erred in overruling the objection made by the defendants to the following question propounded to the witness N. B. Nelson, testifying on behalf of the Government:

Q. And what did you report to him?

Mr. GRIGSBY.—Objected to as calling for a conversation not in the presence of the defendants, or any of them.

The COURT.—Overruled.

To which ruling of the Court the defendants excepted and an exception was allowed.

A. I reported that there was gambling down at the Arctic Billiard Hall and he could get them and then I went back and got into the game again.

XXII.

The Court erred in overruling the objection of the defendants to the following question propounded to the witness, N. B. Nelson, testifying on behalf of the Government:

Q. Now, with reference as to who was present at

your table, I will ask you if this gentleman sitting behind me was at [161] your table. (Counsel turns and points to one of the defendants.)

Mr. GRIGSBY.—Objected to as leading, if the Court please.

The COURT.—Overrule the objection.

To which ruling of the Court the defendants excepted and an exception was allowed.

A. He was.

XXIII.

The Court erred in overruling the objection made by the defendants to the following question propounded the witness N. B. Nelson testifying on behalf of the Government:

Q. Had you ever been up there before and seen them gambling?

Mr. GRIGSBY.—Objected to as calling for proof of another offense, and prejudicial.

The COURT.—Overrule the objection.

To which ruling of the Court the defendants excepted and an exception was allowed.

A. I had seen them gambling pretty near every night for a week, playing "stud poker" and "pang-ingui."

XXIV.

The Court erred in overruling the objection of the defendants to the following question propounded the witness N. B. Nelson testifying on behalf of the Government:

Q. From whom did you buy chips at those previous games?

Mr. GRIGSBY.—Objected to as being proof of

another offense not connected with the crime charged in the indictment.

The COURT.—Overruled.

To which ruling of the Court the defendants excepted and an exception was allowed. [162]

A. Whoever might be running the game.

XXV.

The Court erred in overruling the objection made by the defendants to the following question propounded the witness N. B. Nelson, testifying on behalf of the Government:

Q. Did you buy any from Mr. Johnson?

Mr. GRIGSBY.—Objected to as leading.

The COURT.—Overrule the objection.

To which ruling of the Court the defendants excepted and an exception was allowed.

A. I think I did.

XXVI.

The Court erred in sustaining the objection made by the Government to the following question propounded by the defendants to the witness N. B. Nelson on cross-examination:

Q. Have you ever done what is called "stool-pigeoning" before?

Mr. SAXTON.—Object to that.

The COURT.—Objection sustained.

To which ruling of the Court the defendants excepted and an exception was allowed.

XXVII.

The Court erred in sustaining the objection made by the Government to the following question propounded by the defendants to the witness N. B. Nel-

son on cross-examination:

Q. Have you ever done any "gum-shoeing?"

Mr. SAXTON.—We object to the "gum-shoeing."

The COURT.—Objection sustained.

To which ruling of the Court the defendants excepted and an exception was allowed. [163]

XXVIII.

The Court erred in refusing to permit the defendants to ask certain questions of the witness N. B. Nelson on cross-examination as follows:

Q. Have you ever acted as an informer before?

A. I don't really know the meaning of your term.

Q. Do you understand what the term "stool-pigeon" means? A. Yes, sir.

Mr. GRIGSBY.—I will ask permission to use the language the witness understands, if the Court please.

The COURT.—Overrule the permission.

To which ruling of the Court the defendants excepted and an exception was allowed.

XXIX.

The Court erred in sustaining the objection made by the Government to the following question propounded by the defendants to the witness N. B. Nelson on cross-examination:

Q. Didn't you testify in your former examination on the former trial of this case that all he told you to do was to look up gambling in the town of Nome and report to Phil Holland?

Mr. SAXTON.—We object to this. This is reduced to writing and signed by the witness and it is improper to ask this witness what he testified to on

the former examination without exhibiting to him the writing.

And thereupon after argument the Court refused to permit counsel to ask the above question without first exhibiting to the witness a paper purporting to be the written transcript of his testimony, to which ruling of the Court the defendants then and there excepted and an exception was allowed. [164]

XXX.

The Court erred in refusing to permit the defendants to ask the witness N. B. Nelson the following question on his cross-examination without first exhibiting to him a paper purporting to be a transcript of his testimony at the former trial, as follows:

Q. (By Mr. GRIGSBY.) Now did you at that former trial make the following answer to the following question? (Using transcript of testimony furnished by Mr. Saxton.) "Q. Who else was sitting at the table you were sitting at?

A. Mr. Laird and myself, Mr. Adams and that man they call the tamale man, Mr. Pierson, and I think the fellow we call 'Rube' Johnson, but I am not certain about him." Did you make that answer?

Mr. SAXTON.—We ask that this writing be exhibited to the witness.

The COURT.—Show it to him Mr. Grigsby.

Mr. GRIGSBY.—We object to such procedure.

The COURT.—Overruled.

To which ruling of the Court the defendants excepted and an exception was allowed.

(Mr. Grigsby shows transcript to witness.)

Q. Did you make that answer? A. I did.

XXXI.

The Court erred in refusing to permit defendants to propound the following questions to the witness N. B. Nelson on cross-examination without his showing him the paper purporting to be a transcript of his testimony at the former trial of this case:

Q. Did you on the former trial of this case testify as follows: (Referring to the stud poker-table.) "Q. Was Nick Skorlich at that table? A. I could not positively state, I am not sure, I think he was." Did you so answer, did [165] you so state? Can you answer that without looking at this paper?

A. I can.

Mr. SAXTON.—I object unless the paper is shown to the witness and he can see what his answer was and what the question was.

The COURT.—Show him the paper, Mr. Grigsby.

To which ruling of the Court the defendants excepted and an exception was allowed.

Q. (Mr. Grigsby continuing after showing witness transcript.) Did you so answer?

A. Yes, sir.

Q. And you answered a minute ago he was not?

A. I don't think he was. I don't know what has happened to change my recollection of it since the former trial.

XXXII.

The Court erred in sustaining the objection made by the Government to the following question propounded by the defendants to the witness J. H. Young on cross-examination:

Q. Don't you know that one of the deputies in-

formed Mr. Saxton to that effect?

Mr. SAXTON.—Objected to as incompetent and immaterial and not cross-examination.

The COURT.—Sustain the objection.

To which ruling of the Court the defendants excepted and an exception was allowed.

XXXIII.

The Court erred in admitting in evidence a certain stipulation offered by the Government as follows: [166]

In the District Court for the District of Alaska, Second Division.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

ED. JOHNSON, A. C. LAIRD, FRANK KOIBETITZ, JOHN NOVOSEL, NICK SKORLICH, ALFRED PIERSON, ADELBERT G. GUMAER,
Defendants.

STIPULATION.

It is hereby stipulated and agreed by and between the parties hereto through their respective attorneys as follows:

1. That after diligent effort the United States is not able to produce, at the trial of this cause, the following witnesses, to wit, A. Hanson and Elmer Adams.

2. That each of said witnesses, if produced as a witness on the trial of this cause, would refuse to testify to any of the material facts in this cause upon

the ground that such evidence would tend to incriminate himself.

3. That this stipulation may be considered in evidence and read to the jury upon the trial of this cause.

F. M. SAXTON,
United States Attorney.
G. B. GRIGSBY,
HUGH O'NEILL,
Attorneys for Defendants. [167]

To which offer defendants objected upon the ground the said stipulation was immaterial, which objection was overruled by the Court and an exception allowed defendants to said ruling.

XXXIV.

The Court erred in sustaining the motion made by the Government to strike out certain testimony and in sustaining the objection made by the Government to said testimony of the witness Merrill Beatty, a witness testifying on behalf of the defendants as follows:

Q. I will ask you to state whether or not in that conversation between you and him in the presence of Ed Young the proprietor of the Nevada, and Nick Barge, and other persons being present, he stated to you that he has acted as a "stool-pigeon" before?

A. He did.

Q. And got paid for it? A. Yes, sir.

Mr. SAXTON.—I move to strike out the answer of the witness and object to the question for the reason it is entirely immaterial.

The COURT.—Motion granted and objection sus-

tained. To which ruling of the Court the defendants excepted and an exception was allowed.

XXXV.

The Court erred in refusing to permit defendants to prove the conversation referred to in the last assignment of error by the witness Ed Young and the witness Nick Barge, as follows:

Mr. GRIGSBY.—We offer to prove the same conversation by Ed Young and Nick Barge.

Mr. SAXTON.—Same objection.

The COURT.—Objection sustained. [168]

To which ruling of the Court the defendants excepted and an exception was allowed.

XXXVI.

The Court erred in refusing to grant the motion made by the defendants that the Court direct a verdict of "not guilty" as to each of the defendants for the crimes charged in the indictment, and both of them, for the reason that there is no evidence of any gambling for money except that of the witness N. B. Nelson, who is a self-confessed accomplice, the statute of Alaska providing that a conviction cannot be had upon the uncorroborated testimony of an accomplice. To which ruling of the Court the defendants excepted and an exception was allowed.

XXXVII.

The Court erred in refusing to permit the defendants to put in evidence the transcript of the proceedings of the United States Commissioner's Court for the Nome Precinct, Second Division, Territory of Alaska, in the case of the United States of America versus Ed Johnson, A. C. Laird and others, for the

purpose of showing that the defendants, and each of them, had already been tried for the precise offense charged in the indictment. The Government objected to this offer as incompetent, irrelevant and immaterial, which objection was sustained by the Court, and an exception allowed the defendants to said ruling. Said transcript was marked "Defendants' Exhibit 1" for identification and is contained in the Bill of Exceptions herein.

XXXVIII.

The Court erred in refusing to permit the defendants to prove certain facts by the witness Mr. Saxton, the U. S. District Attorney, as follows:

Mr. GRIGSBY.—I now offer to prove by Mr. Saxton, [169] the District Attorney, the proceedings which took place at the preliminary hearing and to show by him that the defendants have already had a trial for the precise crimes charged in the indictment, the witness Saxton being present in court.

Mr. SAXTON.—Same objection.

The COURT.—Objection sustained.

To which ruling of the Court the defendants excepted and an exception was allowed.

XXXIX.

The Court erred in sustaining the objection made by the Government to the following question propounded the witness John Nestor on redirect examination:

Q. Isn't it a fact that when Nelson was first examined he said there was something about the game he did not like, and for that reason he complained, and didn't Mr. Saxton then take him in hand and say:

"You were hired by the Marshal to go down there"?

Mr. SAXTON.—Object to that. It is entirely immaterial. This is an impeaching witness.

The COURT.—Sustained the objection.

To which ruling of the Court the defendants excepted and an exception was allowed.

XXXX.

The Court erred in permitting the U. S. Attorney, F. M. Saxton, in his address to the jury, to comment as follows:

"Gentlemen of the Jury, the witness Charles Mason, one of the men who was arrested together with the defendants in this action, has been sworn as a witness in this case, and when asked with reference to what was going on in the Arctic Billiard Parlor at the time of the arrest, in his presence, refused to answer on the ground that said answer might tend to criminate [170] him. Gentlemen of the jury, what was going on there at that time that he was unwilling to tell about for fear it might incriminate him? You know perfectly well what was going on. There was a crime being committed there and you know perfectly well what crime it was."

Whereupon George B. Grigsby excepted to the remarks as being prejudicial to the defendants and asked the Court to instruct the jury that such comment was improper and to disregard the same, which the Court then and there refused to do. To which ruling of the Court the defendants excepted and an exception was allowed.

XXXXI.

The Court erred in giving the jury the following

instruction, being a portion of Instruction No. 4, as follows:

"It is the duty of the Judge of this court to instruct you upon the law applicable to the case, and the statute makes it your duty to accept as law what is laid down by the Court as such in these instructions, and if you should knowingly refuse to do so you would be liable as for contempt of court."

To which instruction an exception was taken by the defendants and allowed by the Court.

XXXXII.

The Court erred in giving the following instruction to the jury, being instruction No. 5½:

"I instruct you that the testimony of one witness, if believed by you, is sufficient to establish any material fact in the case unless such witness is an accomplice. If you believe from the evidence that the witness N. B. Nelson was employed by the United States Marshal for this division to engage in the apprehension of persons violating the law by gambling, and that in pursuance of said employment the said Nelson engaged in a gambling game, if any, with the defendants, then I instruct [171] you that said Nelson is not an accomplice with the defendants, and you should give his testimony the same weight and consideration as you would have done if he had been present and had testified to the same matters without participating in the game.

On the other hand, if you believe from the evidence that the said witness N. B. Nelson was not employed by the United States Marshal or that he did not engage in the gambling game, if any, with the defend-

ants for the purpose of apprehending them, then I instruct you that he was an accomplice and his testimony connecting the defendants with the game, if any, must be corroborated by some other evidence which tends to connect the defendants with the game. However, his testimony as to the character and elements of the game need not be corroborated even though he be an accomplice. In other words the testimony of an accomplice is sufficient, if you believe it, to establish that a certain game played with cards for money, checks, chips or credits of value was being played at a certain time and place, without any corroboration whatever. But his testimony as to who was engaged in or connected with the game, if any, must be corroborated by some other evidence tending to connect the defendants with the game.

Hence, the testimony of said witness, N. B. Nelson, whether you find that he was an accomplice or not, if you believe it, is sufficient to establish the kind of a game that was being played, if any; the means or instrumentalities used in playing such game, if any; and the nature and value of the 'stakes' for which such game was being played, if any. However his testimony, if any, connecting the defendants with the game, must be corroborated as heretofore stated, in case you find him to be an accomplice, but not otherwise."

To which instruction an exception was taken by the defendants and allowed by the Court. [172]

XXXXIII.

The Court erred in instructing the jury as follows, being Instruction No. 5½A.

"The Government has introduced certain evidence in this case tending to show that the defendants were playing for certain chips on which the value in trade of each chip is printed. I instruct you that the printing on each of such chips is sufficient evidence to establish the value thereof, since no evidence has been introduced to explain or contradict the printing thereon."

To which instruction an exception was taken by the defendants and allowed by the Court.

XXXXIV.

The Court erred in instructing the jury as follows, being Instruction No. 7:

"The owner or lessee of a building or room cannot lease or sublet such building or room for an unlawful purpose, or knowingly permit it to be used for an unlawful purpose without being held guilty of the commission of the unlawful act or acts transpiring in such building or room. If you should find from the evidence in this case that one of the defendants held the room in which gambling is alleged to have been conducted under a lease from the owner, and you further find that gambling as alleged was being conducted there, then I instruct you that such owner or lessee is guilty if he knew that such gambling was being carried on there whether he had any connection with the game or not.

It follows, therefore, that if you find gambling was being carried on in the room known as the Arctic Billiard-room or Parlor, and that said room was being held by defendant under a lease from the owner, either oral or written, then I instruct you that

such defendant is guilty if he knew that [173] such room was being used for the purpose of gambling, and a game of stud poker or pangingi played with cards for money or chips of value was had in said room on the night in question, and the owner of said room is likewise guilty under same conditions if he knew them to exist.

Again if you find that a game of stud poker or pangingui was played with cards for money or chips of value on the night in question, in said room, and the defendant had anything to do with said game such as dealer, player, owner, proprietor or employee, then I instruct you that the defendant is guilty, and it does not matter whether he was the lessee or owner of said room and had previous knowledge of said game or not."

To which instruction an exception was taken by the defendants and allowed by the Court.

XXXXV.

The Court erred in instructing the jury as follows, being Instruction No. 8:

"I have permitted evidence to be introduced in this case tending to show gambling to have been carried on in the room known as the Arctic Billiard-room at other times prior to the time alleged, for the purpose of establishing the knowledge of the owner and lessee of said room that gambling was being carried on there, and you should consider it for no other purpose. As to what extent such testimony tends to show such knowledge on the part of defendant is for you to determine."

To which instruction an exception was taken by

the defendants and allowed by the Court.

XXXXVI.

The Court erred in instructing the jury as follows, being Instruction No. 9:

"There has been some testimony tending to show that the [174] defendant Ed Johnson has made statements to the effect that he intended to gamble in spite of law and the efforts of officials to stop him. You should consider his testimony only in determining the guilt or innocence of said defendant, Ed Johnson. You should not consider it as affecting the guilt or innocence of the other defendants."

To which instruction an exception was taken by the defendants and allowed by the Court.

XXXXVII.

The Court erred in refusing to give the following instruction requested by defendants:

"You are instructed that a conviction cannot be had upon the testimony of an accomplice unless he be corroborated by such other evidence as tends to connect the defendants with the commission of the crime, and the corroboration is not sufficient if it merely shows the commission of the crime or the circumstances of the commission."

To the refusal of the Court to give such instruction the defendants excepted, and an exception was allowed.

XXXXVIII.

The Court erred in refusing to give the following instruction requested by the defendants:

"You are instructed that if you believe from the evidence in this case the witness N. B. Nelson to have

been an accomplice of the defendants, or any of them, with relation to the crime or crimes charged in the indictment, then you are instructed that unless the evidence of the witness N. B. Nelson with relation to the crime charged be corroborated by other evidence tending to show that the defendants, or some of them, actually played cards for money, then you should acquit.

It is not sufficient, in case you find N. B. Nelson to have been an accomplice, that his evidence be corroborated with respect [175] to matters which do not necessarily involve the guilt of the accused. He must be corroborated in matters which bear directly upon the guilt of the accused of the offense of gambling."

To the refusal of the Court to give such instruction the defendants excepted, and an exception was allowed.

XXXXIX.

The Court erred in refusing to give the following instruction requested by the defendants:

"The indictment in this case charges the defendants with having played certain games of cards for money at the time and place charged in the indictment. If you are satisfied from the evidence that the defendants, or any of them, did actually play the game of cards mentioned in the indictment at the time and place charged, then it will be for you to determine whether or not such game or games were played for money or representative of value, and in determining this necessary element of the crime charged, you are instructed that a conviction cannot

be had upon the uncorroborated testimony of an accomplice, and if you should find from the evidence that the witness N. B. Nelson was an accomplice and there is no other testimony in the case than his tending to prove that gambling actually took place, then it will be your duty to acquit the defendants."

To the refusal of the Court to give such instruction the defendants excepted, and an exception was allowed.

L.

The Court erred in refusing to give the following instruction requested by the defendants:

"You are instructed that the testimony of an accomplice should be viewed with distrust."

To the refusal of the Court to give such instruction the defendants [176] excepted, and an exception was allowed.

LI.

The Court erred in refusing to give the following instruction requested by the defendants:

"Evidence has been introduced in this case tending to show that one Charles Mason was present in company with the defendants at the time of the arrest of the defendants for the crimes charged in the indictment. The said Charles Mason was called as a witness for the Government in this case and refused to answer certain material questions propounded to him, basing his refusal on the ground that his answer to the questions might tend to criminate him.

You are instructed that you are not to draw any inference prejudicial to the defendants in this case on account of said refusal on the part of said Mason

to answer such questions, and such refusal should in no way be considered by you in determining the guilt or innocence of the defendants, or any of them."

To the refusal of the Court to give such instruction the defendants excepted, and an exception was allowed.

LII.

The Court erred in refusing to give the following instruction requested by the defendants:

"You are instructed with reference to a certain stipulation introduced in evidence in this case and marked Plaintiff's Exhibit 'H,' which stipulation is to the effect that certain witnesses, if present, would refuse to answer any material questions propounded to them, basing their refusal on the ground that their answers to such questions might tend to criminate them, that such stipulation has no [177] probative force whatever and should not be considered by you at all in determining the guilt or innocence of the defendants, and that if the witnesses mentioned in said stipulation had been present in court and refused to answer on the grounds mentioned, such refusal would in no way tend to prove the guilt of the defendants."

To the refusal of the Court to give such instruction and defendants excepted and an exception was allowed.

LIII.

The Court erred in refusing to give the following instruction requested by the defendants:

"You are instructed that the defendants are presumed to be innocent until their guilt is established

to a moral certainty and beyond a reasonable doubt. They are clothed with this presumption, not only at the outset but during all stages of the trial and until the jury determines otherwise."

To the refusal of the Court to give such instruction the defendants excepted and an exception was allowed.

LIV.

The Court erred in refusing to give the following instruction requested by the defendants:

"The evidence in this case shows that E. R. Jordan paid the witness N. B. Nelson a sum of money out of his own personal funds to investigate gambling conditions in the town of Nome. You are instructed that no private person can hire another to participate in a criminal offense even though such participation be for the purpose of detecting other guilty persons and relieve such participant from criminal responsibility, therefore if you believe from the evidence that E. R. Jordan hired the witness Nelson and paid him out of his own personal funds and that the said Nelson participated in the game [178] pursuant to said employment, the said Nelson would be and is an accomplice of all engaged in said game."

To the refusal of the Court to give such instruction the defendants excepted and an exception was allowed.

LV.

The Court erred in instructing the jury after they had retired to deliberate upon their verdict and had been recalled into court, as follows:

"Gentlemen of the Jury: Upon the evidence and

instructions in this case you should be able to reach a verdict.

The evidence in this case is plain, and the law is plain as I have pointed out to you in my written instructions.

Now, I shall give you a longer time for a further and more serious consideration of this case. When you retire to the jury-room again, read over the instructions of the Court carefully and if there is anything about them you do not understand, so advise the Court and I will endeavor to make the same plain to you. It is your duty to arrive at a verdict in the case according to the evidence and the instructions given you, irrespective of all other considerations."

To which instruction the defendants then and there excepted on the ground that said instruction was an attempt to influence the jury to return a verdict against their consciences, the jury then having been deliberating for more than forty hours.

LVI.

The Court erred in rendering and entering a judgment against the defendants upon the verdict, to which ruling of the [179] Court defendants duly excepted and an exception was allowed.

WHEREFORE the defendants Ed Johnson and A. C. Laird, plaintiffs in error, pray that the judgment of the District Court for the District of Alaska, Second Division, be reversed and set aside.

GEORGE B. GRIGSBY,
HUGH O'NEILL,

Attorneys for Ed Johnson and A. C. Laird, Defendants in the District Court and Plaintiffs in Error.

Service of the within and foregoing assignment of errors admitted this 5th day of August, 1916.

F. M. SAXTON,
U. S. Attorney.

[Endorsed]: 1036—Crim. In the District Court for the District of Alaska, Second Division. United States of America, Plaintiff, vs. Ed. Johnson, A. C. Laird et al., Defendants. Assignment of Errors. Filed in the Office of the Clerk of the District Court. of Alaska, Second Division, at Nome. Aug. 5, 1916. G. A. Adams, Clerk. By W. C. McG., Deputy. **[180]**

In the District Court for the District of Alaska, Second Division.

No. 1036–C.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

ED. JOHNSON, A. C. LAIRD, FRANK KOIBETITZ, JOHN NOVOSEL, NICK SKORLICH, ALFRED PIERSON and ADELBERT G. GUMAER,
Defendants.

Petition for Writ of Error.

Ed Johnson and A. C. Laird, defendants in the above-entitled action, feeling themselves aggrieved by the verdict of the jury and the judgment entered on the 5th day of May, 1916, in said action, come now by George B. Grigsby and Hugh O'Neill, their attorneys, and petition the above court for an order

allowing said defendants to prosecute a writ of error to the Honorable, the United States Circuit Court of Appeals for the Ninth Circuit under and according to the laws of the United States in that behalf made and provided, and also that an order be made fixing the amount of bond which the defendants shall give and furnish upon said writ of error and that upon the giving of such security all further proceedings in the above-entitled court be suspended and stayed until the determination of said writ of error by the United States Circuit Court of Appeals for the Ninth Circuit.

And your petitioners will ever pray.

GEORGE B. GRIGSBY,
HUGH O'NEILL,
Attorneys for Defendants.

[Endorsed]: 1036–Crim. In the District Court for the District of Alaska, Second Div. United States of America, Plaintiff, vs. Ed. Johnson, A. C. Laird, Frank Koibetitz, John Novosel, Nick Skorlich, Alfred Pierson and Adelbert G. Gumaer, Defendants. Petition for Writ of Error. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Aug. 5, 1916. G. A. Adams, Clerk. By W. C. McG., Deputy. [181]

In the District Court for the District of Alaska, Second Division.

No. 1036–C.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ED. JOHNSON, A. C. LAIRD, FRANK KOIBETITZ, JOHN NOVOSEL, NICK SKORLICH, ALFRED PIERSON and ADELBERT G. GUMAER,

Defendants.

Order Allowing Writ of Error.

Upon motion of George B. Grigsby and Hugh O'Neill, attorneys for defendants Ed. Johnson and A. C. Laird in the above-entitled action, and upon filing a petition for a writ of error together with assignment of errors it is hereby

ORDERED that a writ of error be and is hereby allowed to have reviewed in the United States Circuit Court of Appeals for the Ninth Circuit the judgment heretofore entered herein and that each of said defendants furnish a bond on said writ of error in the sum of one thousand ($1,000) dollars, the same to operate as a supersedeas bond.

Dated at Nome, Alaska, this 5th day of August, 1916.

J. R. TUCKER,
District Judge.

[Endorsed]: In the District Court for the District of Alaska, Second Div. United States of America,

Plaintiff, vs. Ed. Johnson, A. C. Laird et al., Defendants. Order Allowing Writ of Error. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Aug. 5, 1916. G. A. Adams, Clerk. By W. C. McG., Deputy. [182]

In the District Court for the District of Alaska, Second Division.

No. 1036–C.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ED. JOHNSON, A. C. LAIRD, FRANK KOIBETITZ, JOHN NOVOSEL, NICK SKORLICH, ALFRED PIERSON and ADELBERT G. GUMAER,

Defendants.

Bond on Writ of Error and Supersedeas.

KNOW ALL MEN BY THESE PRESENTS: That we, A. C. Laird, as principal, and Henry Burgh and George Hall as sureties, are held and firmly bound unto the United States of America, plaintiff above named, in the sum of one thousand ($1,000) dollars, to be paid to the United States of America, to which payment well and truly to be made we bind ourselves, and each of us, jointly and severally, and our and each of our successors, representatives and assigns, firmly by these presents.

Sealed with our seals and dated this 5th day of August, 1916.

The condition of this obligation is such, that,

WHEREAS the above-named A. C. Laird, defendant, has sued out a writ of error in the United States Circuit Court of Appeals for the Ninth Circuit to reverse a judgment in the above-entitled cause rendered by the District Court for the District of Alaska, Second Division;

NOW, THEREFORE, if the above-named A. C. Laird shall prosecute said writ to effect and answer all costs and damages if he should fail to make good his plea, and in that event shall also render himself amenable and in all respects abide and perform the orders and judgments of the above-entitled court and of said appellate court, and render himself in execution in case the said judgment is not reversed, then this obligation shall be void; [183] otherwise to remain in full force and virtue.

HENRY BURGH.
G. A. HALL.
A. C. LAIRD.

United States of America,
Territory of Alaska,
Second Division,—ss.

Henry Burgh and G. A. Hall, being duly sworn, each for himself and not one for the other, deposes and says:

That he is a resident of Nome, in the Territory of Alaska, and one of the sureties above named; that he is not a counselor or attorney at law, marshal, deputy marshal, commissioner, clerk of any court or other officer of any court; that he is worth the sum of one thousand ($1,000) dollars over and above all just

debts and liabilities and exclusive of property exempt from execution.

HENRY BURGH.
G. A. HALL.

Subscribed and sworn to before me this 5th day of August, 1916.

[Notarial Seal] D. B. CHACE,
Notary Public for the Territory of Alaska, Residing at Nome.

(My commission expires May 12th, 1917.)

The foregoing bond approved this 5th day of August, 1916.

J. R. TUCKER,
District Judge.

[Endorsed]: 1036–Crim. In the District Court for the District of Alaska, Second Division. United States of America, Plaintiff, vs. Ed. Johnson, A. C. Laird et al., Defendants. Bond on Writ of Error and Supersedeas. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Aug. 5, 1916, G. A. Adams, Clerk. By W. C. McG., Deputy. [184]

In the District Court for the District of Alaska, Second Division.

No. 1036–C.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ED. JOHNSON, A. C. LAIRD, FRANK KOIBETITZ, JOHN NOVOSEL, NICK SKORLICH, ALFRED PIERSON and ADELBERT G. GUMAER,

Defendants.

Bond on Writ of Error and Supersedeas.

KNOW ALL MEN BY THESE PRESENTS: That we, Ed. Johnson as principal, and J. W. Clark and Milo Sladovitch, as sureties, are held and firmly bound unto the United States of America, plaintiff above named, in the sum of one thousand ($1,000) dollars, to be paid to the United States of America to which payment well and truly to be made we bind ourselves, and each of us, jointly and severally, and our and each of our successors, representatives and assigns, firmly by these presents.

Sealed with our seals and dated this 5th day of August, 1916.

The condition of this obligation is such, that,

WHEREAS, the above-named Ed. Johnson, defendant, has sued out a writ of error in the United States Circuit Court of Appeals for the Ninth Circuit to reverse a judgment in the above-entitled

cause rendered by the District Court for the District of Alaska, Second Division;

NOW, THEREFORE, if the above-named Ed. Johnson shall prosecute said writ to effect and answer all costs and damages if he should fail to make good his plea and in that event shall also render himself amenable and in all respects abide and perform the orders and judgments of the above-entitled court and of said appellate court, and render himself in execution in case the said judgment is not reversed, then this obligation shall be void; otherwise to remain in full force and virtue.

J. W. CLARK.
MILO SLADOVICH.
E. M. JOHNSON. [185]

United States of America,
Territory of Alaska,
Second Division,—ss.

J. W. Clark and Milo Sladovich, being duly sworn, each for himself and not one for the other, deposes and says:

That he is a resident of Nome, in the Territory of Alaska, and one of the sureties above named; that he is not a counselor or attorney at law, marshal, deputy marshal, commissioner, clerk of any court or other office of any court; that he is worth the sum of one thousand ($1,000) dollars over and above all just debts and liabilities and exclusive of property exempt from execution.

J. W. CLARK.
MILO SLADOVICH.

Subscribed and sworn to before me this 5th day of August, 1916.

[Notarial Seal] D. B. CHACE,
Notary Public for the Territory of Alaska, Residing at Nome.

(My Commission expires May 12th, 1917.)

The foregoing bond approved this 5th day of August, 1916.

J. R. TUCKER,
District Judge.

[Endorsed]: #1036—Crim. In the District Court for the District of Alaska, Second Division. United States of America, Plaintiff, vs. Ed. Johnson, A. C. Laird et al., Defendants. Bond on Writ of Error and Supersedeas. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Aug. 5, 1916. G. A. Adams, Clerk. By W. C. McG., Deputy. [186]

In the District Court for the District of Alaska, Second Division.

No. 1036–C.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

ED. JOHNSON, A. C. LAIRD, FRANK KOIBE-TITZ, JOHN NOVOSEL, NICK SKOR-LICH, ALFRED PIERSON and ADEL-BERT G. GUMAER,
Defendants.

Writ of Error—(Lodged Copy).

The President of the United States of America to the Honorable, the Judge of the District Court for the District of Alaska, Second Division, GREETING:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said District Court for the District of Alaska, Second Division, before you, the United States of America, plaintiff, and Ed. Johnson and A. C. Laird, defendants, a manifest error hath happened to the great damage of said Ed. Johnson and A. C. Laird, defendants, as appears by the petition herein.

We, being willing that error, if any hath been, should be duly corrected and full and speedy justice be done to the parties aforesaid in this behalf do command you, if judgment be given therein, that then under your seal distinctly and openly you sent the record and proceedings aforesaid with all things concerning the same to the Justices of the United States Circuit Court of Appeals for the Ninth Circuit in the city of San Francisco, in the State of California, together with this writ so as to have the same at the said place in court on the 4th day of August, 1916, that the record and proceedings aforesaid being inspected the said Circuit Court of Appeals may cause further to be done therein to correct those errors what of right and according to the laws and customs of the United States should be done.

WITNESS the Honorable EDWARD D. WHITE, Chief Justice of the Supreme Court of the

United States this 5th day of August, 1916. [187]

Attest my hand and seal of the District Court for the Second Division of the District of Alaska, on the day and year last above written.

[Seal] G. A. ADAMS,

Clerk of the District Court for the District of Alaska, Second Division.

Allowed this 5th day of August, 1916.

J. R. TUCKER,

District Judge.

[Endorsed]: 1036—Crim. In the District Court for the District of Alaska, Second Div., United States of America, Plaintiff, vs. Ed. Johnson, A. C. Laird et al., Defendants. Writ of Error. (Lodged Copy.) Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Aug. 5, 1916. G. A. Adams, Clerk. By W. C. McG., Deputy. [188]

In the District Court for the District of Alaska, Second Division.

No. 1036–C.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ED. JOHNSON, A. C. LAIRD, FRANK KOIBETITZ, JOHN NOVOSEL, NICK SKORLICH, ALFRED PIERSON and ADELBERT G. GUMAER,

Defendants.

Order Extending Time to File Record Until October 4, 1916.

On motion of George B. Grigsby and Hugh O'Neill, counsel for defendants, the time for filing the record in the above-entitled cause, in the United States Circuit Court of Appeals for the Ninth Circuit, is hereby extended to and until the 4th day of October, 1916.

Done in open court this 5th day of August, 1916.

J. R. TUCKER,
District Judge.

[Endorsed]: 1036—Crim. In the District Court for the District of Alaska, Second Div., United States of America, Plaintiff, vs. Ed. Johnson, A. C. Laird et al., Defendants. Order Fixing Time to File Record. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Aug. 5, 1916. G. A. Adams, Clerk. By W. C. McG., Deputy. [189]

In the District Court for the District of Alaska, Second Division.

No. 1036–C.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

ED. JOHNSON, A. C. LAIRD, FRANK KOIBETITZ, JOHN NOVOSEL, ALFRED PIERSON and ADELBERT G. GUMAER,
Defendants.

Praecipe for Transcript of Record.

To the Clerk of the Above-entitled Court:

You will please make transcript of the following papers on file herein:

Indictment, motion to quash indictment and affidavit in support thereof, minute order overruling motion to quash indictment, demurrers, minute orders overruling demurrers, court minutes showing plea former acquittal, written plea former jeopardy, motion that special officer be appointed to serve venire for jurors and affidavit in support thereof, minute order overruling same, instructions of the Court, additional instructions, verdict, judgment bill of exceptions, orders extending time to file bill of exceptions, assignment of errors, petition for writ of error, order allowing writ of error, bonds on writ of error, lodged copy of writ of error, order extending time to docket case, original writ of error and citation to be attached.

GEORGE B. GRIGSBY.
HUGH O'NEILL.

[Endorsed]: #1036–C. In the District Court for the District of Alaska, Second Div., United States of America, Plaintiff, vs. Ed. Johnson, A. C. Laird, Frank Koibetitz, John Novosel, Alfred Pierson and Adelbert G. Gumaer, Defendants. Praecipe for Transcript of Record. Filed in the Office of the Clerk of the District Court of Alaska, Second Division, at Nome. Aug. 11, 1916. G. A. Adams, Clerk. By W. C. McG., Deputy. [190]

In the District Court for the District of Alaska, Second Division.

No. 1036—CRIM.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ED. JOHNSON, A. C. LAIRD, FRANK KOIBE-TITZ, JOHN NOVOSEL, NICK SKORLICH, ALFRED PIERSON, ADELBERT G. GUMAER,

Defendants.

Certificate of Clerk U. S. District Court to Transcript of Record.

I, G. A. Adams, Clerk of the District Court of Alaska, Second Division, do hereby certify that the foregoing typewritten pages, from 1 to 190, both inclusive, are a true and exact transcript of the indictment, motion to quash indictment and affidavit in support thereof, minute order overruling motion to quash indictment, demurrer, minute order overruling demurrer, court minutes showing plea former acquittal, written plea former jeopardy, motion that special officer be appointed to serve venire for jurors and affidavit in support thereof, minute order overruling same, instructions of the Court, additional instructions, verdict, judgment, bill of exceptions, orders extending time to file bill of exceptions, assignment of errors, petition for writ of error, order allowing writ of error, bonds on writ of error, lodged copy of writ of error, order extending time to docket

case and praecipe for Transcript of Record, in the case of United States of America, Plaintiff, vs. Ed. Johnson, A. C. Laird, Frank Koibetitz, Nick Skorlich, John Novosel, Alfred Pierson and Adelbert G. Gumaer, Defendants, No. 1036—Crim., this Court, and of the whole thereof, as appears from the records and files in my office at Nome, Alaska; and further certify that the original Writ of Error and original Citation in the above-entitled cause are attached to this transcript.

Cost of transcript, $80.75, paid by George B. Grigsby, of attorneys for defendants.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court this 11th day of September, A. D. 1916.

[Seal] G. A. ADAMS,
Clerk. [191]

In the District Court for the District of Alaska, Second Division.

No. 1036—C.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

ED. JOHNSON, A. C. LAIRD, FRANK KOIBETITZ, JOHN NOVOSEL, NICK SKORLICH, ALFRED PIERSON, ADELBERT G. GUMAER,
Defendants.

Writ of Error (Original).

The President of the United States of America to the Honorable, the Judge of the District Court for the District of Alaska, Second Division, GREETING:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said District Court for the District of Alaska, Second Division, before you, the United States of America, plaintiff, and Ed Johnson and A. C. Laird, defendants, a manifest error hath happened to the great damage of said Ed. Johnson and A. C. Laird, defendants, as appears by the petition herein.

We, being willing that error, if any hath been, should be duly corrected and full and speedy justice be done to the parties aforesaid in this behalf, do command you, if judgment be given therein, that then under your seal, distinctly and openly, you sent the record and proceedings aforesaid with all things concerning the same to the Justices of the United States Circuit Court of Appeals for the Ninth Circuit, in the city of San Francisco, in the State of California, together with this writ so as to have the same at the said place in court on the 4th day of September, 1916, that the record and proceedings aforesaid being inspected the said Circuit Court of Appeals may cause further to be done therein to correct those errors what of right and according to the laws and customs of the United States should be done.

WITNESS the Honorable EDWARD D. WHITE, Chief Justice of [192] the Supreme Court of the United States, this 5th day of August, 1916.

Attest my hand and seal of the District Court for the Second Division of the District of Alaska, on the day and year last above written.

[Seal] G. A. ADAMS,
Clerk of the District Court for the District of Alaska, Second Division.

Allowed this 5th day of August, 1916.

J. R. TUCKER,
District Judge. [193]

[Endorsed]: In the District Court for the District of Alaska, Second Div. United States of America, Plaintiff, vs. Ed. Johnson, A. C. Laird, et al., Defendants. Writ of Error (Original). [194]

In the District Court for the District of Alaska, Second Division.

No. 1036—C.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

ED. JOHNSON, A. C. LAIRD, FRANK KOIBE-TITZ, JOHN NOVOSEL, NICK SKOR-LICH, ALFRED PIERSON, ADELBERT G. GUMAER,
Defendants.

Citation on Writ of Error.

The President of the United States of America to the United States of America and F. M. Saxton, U. S. Attorney for the District of Alaska, Second Division:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit to be held at the city of San Francisco, in the State of California, on the 4th day of September, 1916, pursuant to a writ of error filed in the clerk's office of the District Court for the District of Alaska, Second Division, wherein Ed. Johnson and A. C. Laird are plaintiffs in error, and the United States of America is defendant in error, to show cause, if any there be, why judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done in that behalf.

WITNESS, the Honorable EDWARD D. WHITE, Chief Justice of the United States Supreme Court of the United States of America, this 5th day of August, 1916, and of the Independence of the United States the one hundredth and fortieth.

J. R. TUCKER,

Judge of the District Court, District of Alaska, 2d Division.

[Seal] Attest: G. A. ADAMS,

Clerk of the District Court. [195]

Service of the foregoing citation hereby admitted this 5th day of August, 1916.

F. M. SAXTON, [196]

[Endorsed]: In the District Court for the District of Alaska, 2d Division. United States of America, Plaintiff, vs. Ed. Johnson, A. C. Laird, et al., Defendants. Citation (Original).

[Endorsed]: No. 2891. United States Circuit Court of Appeals for the Ninth Circuit. Ed. Johnson and A. C. Laird, Plaintiffs in Error, vs. The United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the District of Alaska, Second Division.

Received September 29, 1916.

F. D. MONCKTON,
Clerk.

Filed Pursuant to Order Entered December 4, 1916, *non pro tunc* as of October 4, 1916.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

In the United States Circuit Court of Appeals for the Ninth Circuit.

ED. JOHNSON and A. C. LAIRD,
Plaintiffs in Error,

vs.

UNITED STATES OF AMERICA,
Defendant in Error.

Motion to File Record and Docket Cause as of October 4, 1916.

Come now the plaintiffs in error in the above-entitled cause by their attorneys George B. Grigsby and Thos. R. White, and move the Court for an Order directing that the record in the above-entitled cause may be filed and the case docketed as of the date October 4th, 1916.

This motion is based upon the affidavit of George B. Grigsby hereunto annexed and made a part hereof.

GEORGE B. GRIGSBY,
THOS. R. WHITE,
Attorneys for Plaintiffs in Error.

In the United States Circuit Court of Appeals for the Ninth Circuit.

ED. JOHNSON and A. C. LAIRD,
Plaintiffs in Error,

vs.

UNITED STATES OF AMERICA,
Defendant in Error.

Affidavit of George B. Grigsby in Support of Motion to File Record and Docket Cause.

State of California,
City and County of San Francisco,—ss.

George B. Grigsby, being first duly sworn, deposes and says: That he is one of the attorneys for plaintiffs in error in the above-entitled cause; that judgment was rendered against said plaintiffs in error

in the United States District Court for the Territory of Alaska, Second Division, on the 5th day of May, 1916; that thereafter plaintiffs in error sued out a writ of error to the above-entitled court, which said writ of error was allowed by the said District Court of Alaska on August 5th, 1916; that said District Court of Alaska, by proper order, further extended the time for filing the record in said cause and docketing said cause in the Circuit Court of Appeals, Ninth Circuit, until and including October 4, 1916. That affiant was attorney for plaintiffs in error in all proceedings connected with the suing out of said writ, but that affiant left the second Division of Alaska on or about August 19th, 1916, to take part in the campaign preceding the election of November 7, 1916, affiant being the Democratic candidate for the office of Attorney General of Alaska; that affiant was of necessity absent from Nome, Alaska, in the Second Division of Alaska, for said reason from August 19th until November 5th. That before leaving Nome, Alaska, affiant instructed plaintiffs in error to pay the clerk of the United States District Court of said Second Division, Territory of Alaska, for the transcript herein and to cause the same to be mailed to the clerk of the Circuit Court of Appeals, and to remit to said Clerk of the Circuit Court of Appeals the sum of twenty-five dollars, being the fee for filing the record and docketing the case. That accordingly plaintiffs in error did cause said transcript of record to be forwarded as aforesaid to the clerk of this court, but inadvertently failed to remit the said docket fee required by law. That said transcript of

record was received by the clerk of this court on September 29th, 1916, but that the clerk of said court did not receive said docket fee on or prior to October 4th, 1916.

That for the above reasons said cause has not been *docket* nor said record filed.

That no motion has been made by any one appearing on behalf of the United States, that said case be dismissed.

GEORGE B. GRIGSBY.

Subscribed and sworn to before me this 29th day of November, 1916.

[Seal] FLORA HALL,

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: No. 2891. In the United States Circuit Court of Appeals, for the Ninth Circuit. Ed. Johnson and A. C. Laird, Plaintiffs in Error, vs. United States of America, Defendant in Error. Motion to File Record and Docket Case and Affidavit of George B. Grigsby. Filed Dec. 4, 1916. F. D. Monckton, Clerk.

At a stated term, to wit, the October term, A. D. 1916, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the city and county of San Francisco, in the State of California, on Monday, the fourth day of December, in the year of our Lord one thousand, nine hundred and sixteen. Present: The Honorable WILLIAM W. MORROW, Circuit Judge, Presiding; Honorable WILLIAM H. HUNT, Circuit Judge:

No. 2891.

ED JOHNSON et al.,

Plaintiffs in Error,

vs.

THE UNITED STATES OF AMERICA,

Defendant in Error.

Order Directing Filing of Record and Docketing of Cause.

It appearing to the Court from the affidavit of George B. Grigsby, one of the attorneys for the above-named plaintiffs in error, that a writ of error was allowed in the above-entitled cause by the United States District Court for the Second Division of the Territory of Alaska, on August 5, 1916, and that the time for filing the record and docketing of said case was extended by order of said court until and including October 4th, 1916:

And it appearing that the Transcript of Record in said cause was received by the clerk of this court on September 29th, 1916, and that plaintiffs in error

failed to cause the same to be docketed within the time fixed by said District Court of Alaska, as aforesaid, and reasonable excuse appearing therefor; and,

WHEREAS, the record in said cause has not been filed nor said case docketed and no motion has been made to dismiss said cause,

NOW, THEREFORE, on motion of Messrs. George B. Grigsby and Thomas R. White, attorneys for plaintiffs in error, herein, IT IS ORDERED AND DIRECTED that the record in the above-entitled cause may be filed, and said case docketed in the office of the clerk of this court as of the date of October 4, 1916, on payment of the fee required by law.